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SESSION OF 1996

180TH OF THE GENERAL ASSEMBLY

No. 62

SENATE

MONDAY, November 25, 1996

The Senate met at 2:15 p.m., Eastern Standard Time.

The PRESIDENT (Lieutenant Governor Mark S. Schweiker) in the Chair.

PRAYER

The Chaplain, Reverend MATTHEW WINTERS, Retired Pastor of Trinity Lutheran Church, Camp Hill, offered the following prayer:

Let us pray.

Almighty God, our Heavenly Father, on this week when we celebrate a day of national Thanksgiving, we thank You for all the blessings of this life, especially for those that are ours in this free nation and Commonwealth. For those gifts that You have given to us, the fruits of the soil, the untold resources of the earth, the opportunities for work and play and healthful living, for liberty and speech and written word and for public education and regard for every person's welfare, we give You thanks.

And especially we thank You also for the Members of this Senate, their staff, and all others who work to make this assembly a means by which our citizens are governed and provided for in accordance with Your will and wisdom.

Finally, we give thanks for all Your gifts and ask that You would continue to bless our Commonwealth and give it that greatness which alone is pleasing to You, the righteousness that is the doing of Your holy will.

We ask these things in Your holy name. Amen.

The PRESIDENT. The Chair thanks Reverend Winters, who is the guest today of Senator Mowery.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of November 20, 1996.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator LOEPER, further reading was dispensed with and the Journal was approved.

REPORTS FROM COMMITTEE

Senator TILGHMAN, from the Committee on Appropriations, reported the following bills:

HB 168 (Pr. No. 3374) (Rereported)

An Act amending Titles 24 (Education) and 71 (State Government) of the Pennsylvania Consolidated Statutes, providing for special supplemental postretirement adjustments.

HB 397 (Pr. No. 4292) (Amended) (Rereported)

An Act amending the act of December 7, 1982 (P. L. 784, No. 225), known as the Dog Law, further providing for preliminary material, for licenses, tags and kennels, for dogs at large, for duties of officers, for duties of the department, for offenses, for dangerous dogs, for injuries to dogs, for damages by dogs, for statements and proofs and for enforcement and penalties; providing for sterilization of dogs and cats; further providing for funds, for liability of the Commonwealth, for applicability, for abandonment and for repeals.

HB 1509 (Pr. No. 4282) (Rereported)

An Act amending Titles 15 (Corporations and Unincorporated Associations) and 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for generation choice for customers of electric cooperatives and utilities; further providing for definitions; reenacting procedural requirements for taxicab certificates and medallions; providing for restructuring of the electric utility industry; and further providing for taxation.

HB 2021 (Pr. No. 4293) (Amended) (Rereported)

An Act amending the act of August 9, 1955 (P.L.323, No.130), known as The County Code, further providing for taking money and property by gift, for creation of a capital reserve fund, for the operating reserve fund, for billing and collecting by the county treasurer, for functions of the controller, for custody of documents, for books of fiscal affairs, for settlement of accounts, for audit of accounts, for claims against a county, for reports to commissioners, for fees of witnesses and jurors, for receipts and accounts of money due a county, for preparation of proposed annual budget, for amending budgets, for levies, for tax rates, for appropriations, for filing the budget, for notice and for the preparation of uniform forms; providing for refusal to submit to examination and for the procedure for approval; further providing for refunds of unconstitutional taxes for counties of the second, second class A and third through eighth classes and cities of the first class coterminus with counties of the first class; providing for eligibility for retirement allowances for certain employees in counties of the second class; making a repeal; and repealing certain provisions of law imposing liability on counties for certain payments.

HB 2065 (Pr. No. 4216) (Rereported)

An Act amending the act of April 14, 1972 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol Abuse Control Act, adding a definition; providing for commitment of minors; and further providing for financial obligation.

HB 2186 (Pr. No. 4303) (Rereported)

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for clarification of the status of members of the Fish and Boat Commission, its Boating Advisory Board and deputy waterways patrolmen; providing for a volunteer program; further providing for classification of offenses and penalties, for boating under the influence and for Class A regulated fishing lakes; and providing for marking of dams.

HB 2191 (Pr. No. 4271) (Rereported)

An Act providing for supervision of child-care facilities; and conferring powers and duties on the Department of Public Welfare.

HB 2463 (Pr. No. 4236) (Rereported)

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, defining "bodily injury," "facsimile," "poaching" and "serious bodily injury"; further defining "game," "hunt" or "hunting," "take" and "wildlife" to include facsimiles; further providing for the terms of commission members; providing for the use of facsimiles for law enforcement purposes, for the use of protective materials by officers and for an additional penalty for poaching; and further providing for incident reports and assistance, for increased penalties for shooting at, causing injury to or killing another person, for the use of lights while hunting, for carrying loaded firearms in certain vehicles, for safety zones by employees and agents of political subdivisions holding valid deer control permits, for the training of dogs, for restrictions on vehicles, for license revocation, for disabled hunting licenses and for taxidermy permits.

HB 2585 (Pr. No. 4294) (Amended) (Rereported)

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for the organization of the Pennsylvania Fish and Boat Commission; providing for use of credit and debit cards; providing for limitation on regulatory jurisdiction; prohibiting interference with lawful fishing and boating; and further providing for disabled veterans and for fish collecting activities.

HB 2586 (Pr. No. 4252) (Rereported)

An Act amending the act of August 9, 1955 (P.L.323, No.130), known as The County Code, authorizing counties to make appropriations to municipal corporations for disaster or emergency aid.

HB 2657 (Pr. No. 4158) (Rereported)

An Act amending the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, requiring notice to be sent to certain taxpayers who fail to make timely payment of certain taxes.

DISCHARGE PETITIONS

The PRESIDENT laid before the Senate the following communications, which were read by the Clerk as follows:

In the Senate, November 25, 1996

A PETITION

To place before the Senate the nomination of Nolan Kurtz, as a member of the Registration Board for Professional Engineers, Land Surveyors and Geologists.

TO: The President Officer of the Senate:

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of Nolan Kurtz, as a member

of the Registration Board for Professional Engineers, Land Surveyors and Geologists, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

William J. Stewart
Robert J. Mellow
Leonard J. Bodack
Michael A. O'Pake
Vincent J. Fumo
Patrick J. Stapleton
Anthony B. Andrezeski

In the Senate, November 25, 1996

A PETITION

To place before the Senate the nomination of Margaret A. Tyndall, Ph.D., as a member of the Children's Trust Fund Board.

TO: The President Officer of the Senate:

WE, The undersigned members of the Senate, pursuant to section 8 (b) of Article IV of the Constitution of Pennsylvania, do hereby request that you place the nomination of Margaret A. Tyndall, Ph.D., as a member of the Children's Trust Fund Board, before the entire Senate body for a vote, the nomination not having been voted upon within 15 legislative days:

William J. Stewart
Robert J. Mellow
Leonard J. Bodack
Michael A. O'Pake
Vincent J. Fumo
Patrick J. Stapleton
Anthony B. Andrezeski

The PRESIDENT. These communications will be laid on the table.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, I request legislative leaves for today's Session on behalf of Senator Peterson and Senator Salvatore.

The PRESIDENT. Senator Loeper requests legislative leaves for Senator Peterson and Senator Salvatore. Without objection, those leaves are granted.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request temporary Capitol leaves for Senator Hughes, Senator Tartaglione, and Senator Kasunic.

The PRESIDENT. Senator Mellow requests temporary Capitol leaves for Senator Hughes, Senator Tartaglione, and Senator Kasunic. Without objection, those leaves are granted.

CALENDAR**SENATE RESOLUTION No. 158, ADOPTED**

Senator LOEPER, without objection, called up out of order, from page 7 of the Calendar, as a Special Order of Business, Senate Resolution No. 158, entitled:

A Resolution commemorating the 30th Anniversary of the passage of the Mental Health and Mental Retardation Act of 1966.

On the question,
Will the Senate adopt the resolution?

The yeas and nays were required by Senator LOEPER and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A majority of the Senators having voted "aye," the question was determined in the affirmative.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Kasunic has returned, and his temporary Capitol leave is cancelled.

SPECIAL ORDER OF BUSINESS GUEST OF SENATOR ROBERT J. THOMPSON PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Chester, Senator Thompson.

Senator THOMPSON. Mr. President, I rise to introduce Ms. Jennifer Thoma, who is in the visitor's gallery. She is a sophomore at West Chester University, a graduate of Great Valley High School, and lives in Malvern. She is very eminently qualified to be a student intern in my district office for this semester since at West Chester University she is vice president of CAOS, which is the Council of Community And Off-campus Students. Jennifer is here visiting in the Capitol today, and I would like my colleagues to offer her their usual warm greeting.

The PRESIDENT. Would our guest please rise.
(Applause.)

The PRESIDENT. The Chair would acknowledge the representative from CAOS.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. The Chair recognizes the presence of Senator Tartaglione, and her temporary Capitol leave is cancelled.

ELECTION OF INTERIM PRESIDENT PRO TEMPORE

The PRESIDENT. The next order of business will be the election of an interim President pro tempore, as required by Article II, Section 9, of the Constitution of the Commonwealth of Pennsylvania, which requires in part that, "The Senate shall, at the beginning and close of each regular session...elect one of its members President pro tempore...."

Before taking up nominations for the office of President pro tempore, the Chair would again respectfully suggest, if there are no objections, that in the event there is only one candidate for the office, the Chair will dispense with the calling of the roll and ask for a voice vote on the nomination. The Chair hears no objection to that.

The Chair will now accept nominations for the office of President pro tempore.

The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, one of our responsibilities in the Senate of Pennsylvania is to elect an interim President pro tempore that will actually cover the time period between the adjournment of the current legislative Session and the convening of the new Session on January 7, 1997.

It is my privilege once again today, Mr. President, to nominate Senator Robert C. Jubelirer of Blair County to serve as the interim President pro tempore. Senator Jubelirer has served nearly 11 years as President pro tempore of the Senate, and it is my view, Mr. President, that during that period of time he has provided the capable and fair leadership that all of us on both sides of the aisle expect from the individual who holds this important position. Mr. President, Senator Jubelirer has done an outstanding job of being an advocate and an administrator for the Senate of Pennsylvania and has earned our continuing support and trust, as well as respect.

Mr. President, it is certainly a pleasure for me to nominate Senator Robert C. Jubelirer as interim President pro tempore, and I urge all Members to cast a unanimous ballot for his election.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I would, quite honestly, much prefer to be standing at this microphone today nominating a Democrat, perhaps myself if that would be possible, but I guess it is not possible, so the next thing that I would like to do is second the nomination made by the gentleman from Delaware, Senator Loeper, of our good friend, the gentleman from Blair, Senator Jubelirer.

We have differed politically, we will continue to differ politically. We have had major differences on the ideology of the different things we would like to discuss and the philosophy, but the one thing we do not differ on is friendship, and Senator Jubelirer and I are friends. I recognize the difficult job that he has, and sometimes the only way you know what a difficult job an individual has is when you have had an opportunity for a short period of time to be able to serve in that position.

I think Senator Jubelirer has done an excellent job as the President pro tempore of the Pennsylvania Senate, and I am honored to second Senator Loeper's nomination of Senator Jubelirer.

NOMINATIONS CLOSED

The PRESIDENT. Are there any other nominations? The Chair hears none. The Chair closes the nomination process.

The candidate for the office of interim President pro tempore is the Honorable Robert C. Jubelirer of Blair County. All those in favor of Senator Robert C. Jubelirer for the office of interim President pro tempore will please say "aye"; those opposed, "no."

(A voice vote having been taken, the question was unanimously determined in the affirmative.)

The PRESIDENT. The Chair takes pleasure in declaring Senator Robert C. Jubelirer unanimously elected interim President pro tempore of the Senate.

COMMITTEE APPOINTED TO ESCORT PRESIDENT PRO TEMPORE-ELECT TO THE ROSTRUM

The PRESIDENT. The Chair also takes pleasure in appointing the committee to escort the interim President pro tempore to the rostrum for the administration of the oath of office: the gentleman from Delaware, Senator Loeper; the gentleman from Allegheny, Senator Fisher; and the gentleman from Lackawanna, Senator Mellow. The committee will proceed to escort Senator Jubelirer to the rostrum.

(Whereupon, the President pro tempore-elect was escorted to the rostrum of the Senate.)

ADMINISTRATION OF OATH OF OFFICE TO PRESIDENT PRO TEMPORE-ELECT

The PRESIDENT. The oath of office will be administered to the newly elected President pro tempore by the Honorable J. Michael Eakin, Judge of the Superior Court of the Commonwealth of Pennsylvania.

Please rise.

Judge EAKIN. Would you raise your right hand, Senator, and repeat after me:

I, Robert C. Jubelirer, do solemnly swear that I will support, obey, and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity.

Judge EAKIN. Congratulations to you, Senator.

The PRESIDENT pro tempore. Thank you.

(Applause.)

REMARKS BY THE PRESIDENT PRO TEMPORE

The PRESIDENT. It is now an honor and a privilege to present the President pro tempore, the Honorable Robert C. Jubelirer.

The PRESIDENT pro tempore. Mr. President, there has never been a time when I have taken that oath that you have

so honored me with that I frankly have not tingled all over, and this is no exception. You have given me the greatest honor that this Senate can bestow, and I thank each and every one of you from the bottom of my heart for your vote of confidence and support, and most importantly, for your friendship.

To the gentleman from Delaware, Senator Loeper, and the gentleman from Lackawanna, Senator Mellow, for their kind words, although you will note Senator Mellow's right arm, what I had to do to get him to make that seconding speech, but this time I prevailed. And to the gentleman from Allegheny, Senator Fisher, as well, who was part of the escort committee, and perhaps for his last official duty of the Senate, I am delighted that I could be a part of that as he looks forward to his new challenge. And to each and every one of you, not just for today do I thank you, but for these many years in which you have given me the opportunity in this most sensitive and important position that we call President pro tempore of the Senate.

This is a period of intense competition and far-reaching change for our great State. The many issues that are moving as this legislative Session nears an end are matters important and consequential for the people and communities that we serve. We can take pride in the commitment to progress that is evident in legislation already approved this Session, impacting jobs, education, and crime. We can add substantially to this record through the decisions today and tomorrow of landmark measures now under consideration. I have never, ever seen, in my nearly 22 years here, an agenda that was so full for a post-election Session, and what a challenge it is to the Members of the House and the Senate and the Governor's Office to bring this agenda home in the best interests of the people of Pennsylvania. I want to acknowledge the contributions that each Member of this Senate makes every day towards a better Pennsylvania future, and I look forward to working with Republicans and Democrats on the agenda for people and communities of this great State of ours.

Again, to all of you, to Judge Michael Eakin of the Superior Court, who came over here today to be here on this momentous occasion, I want to thank you for this great honor and position of responsibility. I hope I will always justify your confidence.

Thank you very much.

(Applause.)

The PRESIDENT. The Chair wishes to acknowledge and thank Judge Eakin for taking the time to come here today to administer the oath of office to our interim President pro tempore.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, at this time I ask for a recess of the Senate for the purpose of a Republican caucus to begin immediately in the first floor caucus room, with an expectation of trying to return to the floor at approximately 5:30 p.m.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I would also request that the Democratic Members report to our caucus room immediately.

The PRESIDENT. For Republican and Democratic Caucus meetings to begin immediately, with the intention of returning at approximately 5:30 p.m., the Senate stands in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

SPECIAL ORDER OF BUSINESS ANNOUNCEMENT BY THE SECRETARY

The SECRETARY. Consent has been given for the Committee on Appropriations to meet this evening off the floor to consider House Bills No. 1181, 2046, 2627, and 2703.

HOUSE MESSAGES

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILLS

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to HB 774, HB 873, HB 1468 and HB 1929.

HOUSE CONCURS IN SENATE BILL

The Clerk of the House of Representatives returned to the Senate SB 1320, with the information the House has passed the same without amendments.

SENATE BILLS RETURNED WITH AMENDMENTS

The Clerk of the House of Representatives returned to the Senate SB 689, SB 863, SB 1110, SB 1197 and SB 1585, with the information the House has passed the same with amendments in which the concurrence of the Senate is requested.

The PRESIDENT. Pursuant to Senate Rule XIV, section 5, these bills will be referred to the Committee on Rules and Executive Nominations.

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives informed the Senate that the House has concurred in resolution from the Senate, entitled:

Senate Concurrent Resolution No. 72.

CONSIDERATION OF CALENDAR RESUMED

BILL ON CONCURRENCE IN HOUSE AMENDMENTS TO SENATE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS TO SENATE AMENDMENTS

HB 2091 (Pr. No. 4198) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for examination of applicant for driver's license; providing for physical examinations; further providing for qualifications for school bus driver endorsement; providing for a driver's license compact; and further providing for the operation of school buses, for driving under the influence of alcohol or controlled substances, for snow plow lamps, for permits for movement of wooden structures and for financial responsibility.

On the question,

Will the Senate concur in the amendments made by the House to Senate amendments to House Bill No. 2091?

Senator LOEPER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate amendments to House Bill No. 2091.

On the question,

Will the Senate agree to the motion?

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Indiana, Senator Stapleton.

Senator STAPLETON. Mr. President, I request temporary Capitol leaves for Senator Belan, Senator Bodack, Senator Costa, Senator Porterfield, and Senator Wagner.

The PRESIDENT. Without objection, those leaves are granted.

And the question recurring,

Will the Senate agree to the motion?

The yeas and nays were required by Senator LOEPER and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, Senator Rhoades has been called from the floor to his office, and I request a temporary Capitol leave on his behalf.

The PRESIDENT. Without objection, that leave is granted.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 1

BILL ON SECOND CONSIDERATION AND REREFERRED

HB 2703 (Pr. No. 4285) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, further providing for definitions, for determination of contribution rates and for employer reserve accounts.

Considered the second time and agreed to,
Ordered, To be printed for third consideration.

Upon motion of Senator LOEPER, and agreed to, the bill just considered was rereferred to the Committee on Appropriations.

BILL ON SECOND CONSIDERATION

HB 2873 (Pr. No. 4291) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, further providing for the minimum wage of certain employees.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 2

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 1509 (Pr. No. 4282) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 15 (Corporations and Unincorporated Associations) and 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for generation choice for customers of electric cooperatives and utilities; further providing for definitions; reenacting procedural requirements for taxicab certificates and medallions; providing for restructuring of the electric utility industry; and further providing for taxation.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

RECONSIDERATION OF HB 1509

The PRESIDENT. The Chair recognizes the gentleman from

Senator AFFLERBACH. Mr. President, I move to reconsider the vote by which House Bill No. 1509 was agreed to on third consideration so that we could have the opportunity to offer four or five amendments from this side of the aisle.

The motion was agreed to.

And the question recurring,
Will the Senate agree to the bill on third consideration?

AFFLERBACH AMENDMENT A7958

Senator AFFLERBACH offered the following amendment No. A7958:

Amend Sec. 2 (Sec. 102), page 17, lines 4 and 5, by striking out "REVENUE NEUTRAL RECONCILIATION" and inserting: taxation of electric industry

Amend Sec. 4, page 18, line 19, by striking out all of said line and inserting:

2810. Taxation of electric industry.

Amend Sec. 4 (Sec. 2804), page 36, lines 13 and 14, by striking out "REVENUE NEUTRAL RECONCILIATION" and inserting: taxation of electric industry

Amend Sec. 4 (Sec. 2804), page 37, line 4, by striking out "(M)" and inserting: (f)

Amend Sec. 4 (Sec. 2810), pages 57 through 62, lines 1 through 30; page 63, lines 1 through 28, by striking out all of said lines on said pages and inserting:

§ 2810. Taxation of electric industry.

(a) Procedure, enforcement and penalties.— Parts III, IV, VI

Amend Sec. 4 (Sec. 2810), page 64, lines 1 and 2, by striking out "AND APPLICABLE TO THE TAX IMPOSED UNDER SUBSECTION (B)"

Amend Sec. 4 (Sec. 2810), page 64, line 12, by striking out "(I)" and inserting: (b)

Amend Sec. 4 (Sec. 2810), page 64, line 18, by striking out "(J)" and inserting: (c)

Amend Sec. 4 (Sec. 2810), page 65, line 8, by striking out "(K)" and inserting: (d)

Amend Sec. 4 (Sec. 2810), page 65, line 17, by striking out "(L)" and inserting: (e)

Amend Sec. 4 (Sec. 2810), page 65, line 18, by striking out "(I), (J), AND (K)" and inserting: (b), (c) and (d)

Amend Sec. 4 (Sec. 2810), page 65, line 22, by striking out "(M)" and inserting: (f)

Amend Sec. 4 (Sec. 2810), page 65, lines 29 and 30; page 66, lines 1 through 30; page 67, line 1, by striking out all of said lines on said pages

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, we have been asked to accept a great deal on faith within this bill, and we have been asked to pass a piece of legislation that really is a risk for just about everyone except the Commonwealth of Pennsylvania. And the reason that it is not a risk for the Commonwealth of Pennsylvania as an entity is because there is a section in the bill dealing with what is called revenue neutral reconciliation. My amendment would remove that section from the bill.

I offer the amendment for the following reason. The bill itself states that the general intent of the revenue neutral reconciliation is to assure that over the next several years of transi-

tion into a restructuring of the electric industry, the Commonwealth essentially loses no tax revenue. It further states in the bill, and I quote, "This section is not intended to cause a shift in proportional tax obligations among customer classes or individual electric distribution companies."

Now, Mr. President, revenue neutral reconciliation is nothing more than a new gross receipts tax, a gross receipts tax that will work in conjunction with the present gross receipts tax on electric utilities. It is proposed that this RNR, as it is called, will come into play to assure revenue neutrality, so that at such time as a result of decreases in the cost of generation, decreases in the cost of production, if in fact the Commonwealth loses revenue, the RNR will take precedence at that point and apply a tax rate to regain that revenue. It shall, however, not allow the revenue to exceed that of the base year. On the other hand, if for some reason the Commonwealth revenue should exceed the base year, the RNR is then proposed to go into effect to reduce that revenue accordingly, again to remain at the same cap as the base year.

The difficulty I have with thoroughly protecting the Commonwealth is twofold. The first is that we, by passage of this legislation, should that occur, are asking everyone else in the process to take a risk. We are asking the existing utilities, we are asking the nonutility generators, and most importantly we are asking the ratepayer in the three customer classes to take a risk that they will gain from this bill through less cost in the generation of electricity and the ability to choose their producer, but there are no guarantees that they will gain. We are suggesting to the existing utilities that they will be able, should they choose, to refinance through a bond mechanism their stranded assets, but there is no guarantee as to how much of those stranded assets the Public Utility Commission will be permitting to be written off or refinanced. We are asking the residential customer to take the risk that he or she will be able to find a producer that will allow them to purchase the electricity generated at a cost less than they can now purchase it from their existing utility, but there is no guarantee that they will find such a producer.

Essentially, we are making no guarantees in this bill to anyone except the Commonwealth. It strikes me as odd that if this legislation is as good as everyone is predicting it should be that we are afraid to take the same risk as a Commonwealth. Now, I can understand why some people may be afraid to take that risk, because there is a great deal of tax money presently generated under the existing electric utility system. And in fact, when the bill sets forth the base year calculation on page 66, it specifies those tax amounts as follows: corporate net income tax, \$181,628,433; capital stock and franchise tax, \$117,495,605; sales and use tax, \$187,401,632; public utility realty tax, \$43,883,573; and utilities gross receipts tax, which of course are paid directly by the customer and simply funneled through the utility to the Commonwealth, \$453,732,594. All totaled, that is a tremendous amount of tax that the Commonwealth depends upon each year.

Now, if in fact the other provisions of this bill operate as the proponents are projecting they will operate, then I think we can expect to see a decrease in the amount of taxation that the

Commonwealth can collect through these taxes specified on page 66. No one has been able to tell me, and in fact I do not believe anyone has been able to make an accurate guess as to what that decrease will be, but there are certain scenarios. The first scenario is that if in fact power generation is sold in this Commonwealth at a rate substantially less than it is today, the gross receipts tax will diminish and the RNR will be invoked to make up that amount of money paid directly by the customer. If in fact the stranded investment portion, the stranded asset portion, of the bill works as people believe it will work, once those stranded assets are retired and once they are written down and written off, we can expect a decrease in the capital stock and franchise tax. To what extent is anyone's guess, but again the RNR will be invoked to pass on to the ratepayer the loss of that revenue.

If in fact there is a reduction in the corporate net income tax, it may well occur under the following circumstances. Back in the decade of the 1980s, public utilities went to the courts of the Commonwealth and asked to take advantage of what is known as the manufacturer's exemption under the corporate net income tax. The court did not permit that exemption to be applied to utilities at that time, in part because they were a regulated public utility. Now, it seems to me that the more clever accountants and more clever lawyers in the utilities may well wish to go back to the courts again, may well wish to have their utility divest itself of its generating capacity into a subsidiary and then go to the court and say, now we should be entitled to the manufacturer's exemption on that subsidiary because it is no longer a regulated portion of our utility business. If the court should agree at this time, the utility then is permitted to take that deduction which will reduce the corporate net income tax. To what extent is anybody's guess, but once again the RNR would be invoked to pass along to the ratepayer the cost of making up that reduction in the CNI. And so it goes through each of the tax classes.

Mr. President, I think that is inappropriate. I think if we are going to pass a piece of legislation that significantly restructures the electric utility industry and we ask everyone else to take a risk that this is going to be in the best interest of the Commonwealth, we as the representatives of that Commonwealth should also be willing to take that risk on behalf of the Commonwealth. If in fact passage of this legislation is going to encourage economic development, it is going to bring business into Pennsylvania, it is going to provide additional jobs, that will provide additional tax revenue paid by those new businesses, additional tax revenue generated from that economic development, additional personal income tax revenue generated by those jobs, all to the plus side of the collecting revenue. It seems to me if the bill is in fact going to generate that kind of activity and that kind of increased revenue for the Commonwealth, we should be willing to take the risk as we are asking everybody else to take that risk.

Mr. President, I ask that we delete the reconciliation mechanism from the bill and place the Commonwealth on equal footing with everyone else whom we are asking to take the risk. I ask for support for this amendment.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, will the gentleman from Lehigh, Senator Afflerbach, stand for interrogation?

Senator AFFLERBACH. I will, Mr. President.

The PRESIDENT. Senator Brightbill, carry on.

Senator BRIGHTBILL. Mr. President, the gentleman is familiar with the bill. Does the bill contain a rate cap within the bill?

Senator AFFLERBACH. Mr. President, the bill in fact does contain a rate cap of sorts. One of the exemptions to that rate cap, however, would be taxes levied upon the utility by either the Commonwealth or another entity.

Senator BRIGHTBILL. Mr. President, and that rate cap is good for industrial, commercial, and residential customers, is that correct?

Senator AFFLERBACH. Mr. President, within the exemptions, I believe that is correct, yes.

Senator BRIGHTBILL. Mr. President, would the gentleman indicate how long that rate cap is good for according to this legislation?

Senator AFFLERBACH. Mr. President, it is my understanding that that rate cap can be in effect until the stranded investment costs are retired, and that could be a period of time of 9 years.

Senator BRIGHTBILL. Mr. President, the revenue neutral reconciliation that the gentleman refers to, how long is that good for?

Senator AFFLERBACH. Mr. President, that is good forever until the General Assembly repeals it. The revenue neutral reconciliation is adjusted each year during the transition process, but at the end of that process whatever the rate is at that point remains in effect.

Senator BRIGHTBILL. Mr. President, I thank the gentleman. Perhaps he would be a little less ardent about this amendment if he realized that revenue neutral reconciliation is a transitional tool. The rate the formula produces would be frozen after the year 2003, which is a period of 7 years. We have to understand, Mr. President, that the process that we are engaging in is a very dramatic process. We are moving from a regulated, monopolistic industry to one that will be composed very much of a serious element of competition. That means that we have to make some changes and we have to take some risks.

What we have done, Mr. President, is we have attempted to reduce those risks in a number of ways, one of which is to include in this bill a 9-year rate cap, so that while rates can come down during that 9-year period, under law they cannot go up, subject to a number of potential but nevertheless remote circumstances. On the other hand, Mr. President, what we have attempted to do is basically hold the State harmless so that the State will not get more revenue from this bill, nor will it get less. Now, the gentleman says, oh, the State ought to take a risk. Well, perhaps it should and perhaps it should not, but it is key to remember that if our tax proceeds come down lower than predicted, we have two alternatives: one is to reduce services, and the other is to raise other taxes. This provides a level of predictability for the State, but it does not provide any

kind of gradual increase for the State. I think the State is giving up potential future tax revenues. At the same time it is providing itself with a level of taxes that it can predict.

Mr. President, the parties who participated in the negotiations, including utilities, the Consumer Advocate, the industrial consumers, have all agreed that the revenue neutral reconciliation is necessary and it is an important part of this bill, and we would ask for a negative vote.

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Mr. President, I also rise to oppose the gentleman's amendment. The gentleman from Lebanon, Senator Brightbill, has accurately indicated that this revenue neutrality or the revenue recalculation that will take place under the provisions of this bill only takes place from the year 1999 through the year 2003. The reason for that is very clear. During that period of time we will be in transition from a regulated monopoly to a system of complete free enterprise within the electric generating aspect of this industry. That is a period of transition. We are not sure what exactly is going to happen with respect to revenues generated for the Commonwealth, and it is only right and proper that during that period of time with all of that uncertainty that we do have a revenue neutral provision in this bill.

However, what the gentleman from Lehigh, Senator Afflerbach, is not indicating accurately, I believe, is that after the year 2003, the Commonwealth is taking a risk, along with everyone else involved in this legislation, because thereafter whatever the gross receipts tax rate might be with respect to the electric industry, the Commonwealth will be tied to that rate unless we, the General Assembly, choose to raise it thereafter. Therefore, once we are in what would be considered full competition with electric generation, we will be taking a risk because we will be tied to the rate that is set in the year 2003, and thereafter if we do not like that rate we will have to make the political judgment here in the General Assembly to raise that rate and the people obviously would have to pay it. I hope that we will not have to do that, but I think we are in this with the consumers and the electric generating industry in this Commonwealth, just as all other areas of the industry are, and I would urge that the gentleman's amendment be defeated.

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, I wish to just add for the record a response to two of the statements that have been offered by the previous gentlemen. First of all, I certainly agree that the RNR is in this bill in order to provide a level of predictability to tax revenues during the transition period. There is no question in my mind about that. However, when we try to indicate that it is a hold harmless provision, I agree to the extent that it is hold harmless for the Commonwealth and for each of us in this Chamber and Members of the House of Representatives who may otherwise be forced to consider a genuine tax increase bill right up front. It certainly is hold harmless for us, but it is not hold harmless to the customers.

As the gentleman from Dauphin, Senator Piccola, indicated, it is true that beginning in the year 2003 or 2004, depending

upon the Public Utility Commission's decision, the Commonwealth will then begin to assume a certain amount of risk. However, during the period of time beginning with the transition and until 2003 or 2004, my concern is that by holding harmless the Commonwealth and holding harmless ourselves from being forced to consider a reduction of services or a tax increase, we are permitting the opportunity for a considerable shift of revenue responsibility. It is not intended, in my opinion, for the ratepayer to pick up, through a gross receipts tax mechanism, decreases in the corporate net income tax, the capital stock and franchise tax, the public utility realty tax, or the sales and use tax. But the fact remains that if those taxes decrease during this transition period, the only mechanism in the bill to recapture that lost revenue is a gross receipts tax upon every customer.

Now, one does not have to say that it is in any way shifting from class to class, because a gross receipts tax is on the bottom line, so I do not see a class-to-class shift in the clinical sense. But very clearly, if those who benefit the most happen to be in the industrial class, that shift of recapturing revenue is going to occur in actual practice to the other two classes of small business and commercial, and residential.

In any event, reductions in the corporate taxes - capital stock and franchise, public utility realty - would have to be borne by the ratepayer in a gross receipts tax. That is not the way it is being done presently. I do not believe it is a good way to do it in the future, simply to protect ourselves and the Commonwealth from taking a risk during the transition period.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. Senator Hughes and Senator Costa have returned, and their temporary Capitol leaves are cancelled.

And the question recurring,
Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Williams.

Senator WILLIAMS. Mr. President, I rise to ask if the gentleman from Lehigh, Senator Afflerbach, will consent to interrogation.

The PRESIDENT. Will the gentleman from Lehigh, Senator Afflerbach, consent to interrogation?

Senator AFFLERBACH. Yes, Mr. President.

Senator WILLIAMS. Mr. President, I want to be clear if I understand the speaker. My question is, is it his interpretation that the revenue neutral mechanism in fact is an empty gesture because the tax substantially or significantly will be borne by the ratepayer through a gross receipts tax paid to the utility? In essence, is the gentleman saying that?

Senator AFFLERBACH. Mr. President, what I am saying is that the definition of the revenue neutral reconciliation measure in the bill states that it is a mechanism to recapture lost tax revenue. It does not specify that that lost tax revenue shall be from simply the gross receipts tax. It is, in my interpretation, across the board from any of the present utility taxes. That, in effect, means that we would be shifting lost revenue

from such corporate taxes as CNI and capital stock and franchise directly to the consumer ratepayer.

Senator WILLIAMS. Mr. President, so in fact the gentleman is saying that that mechanism essentially is a tax on the consumer, is that correct?

Senator AFFLERBACH. Mr. President, that is correct because it is a gross receipts tax, which applies across the board to all classes of consumers.

Senator WILLIAMS. Mr. President, so if in fact there is a problem due to the competition, which would presumably reduce some rates, then in fact the ratepayer will have to pay anyway a tax where there is a void or a gap, is that fair?

Senator AFFLERBACH. Mr. President, I believe that is possible. The extent to which that occurs is a great unknown.

Senator WILLIAMS. Okay, Mr. President. I am finished with my interrogation.

I would like to follow that with interrogation of the gentleman from Lebanon, Senator Brightbill.

The PRESIDENT. Would the gentleman from Lebanon, Senator Brightbill, consent to interrogation?

Senator BRIGHTBILL. I would be happy to, Mr. President.

The PRESIDENT. Senator Williams, proceed.

Senator WILLIAMS. Mr. President, the gentleman from Lehigh, Senator Afflerbach, in very ABC terms did say that the revenue neutral mechanism may create a gap, and the only way to get that additional money is to meet that guarantee and it would have to be paid by the ratepayer through a mechanism. Does the gentleman have any clear way of responding to that to say that would not happen, that in fact the ratepayer in this mechanism would not be the one to bear the additional tax?

Senator BRIGHTBILL. Mr. President, there is language in the bill to effect that purpose, and we are looking for that language right now.

Senator WILLIAMS. Mr. President, is there anyone who has that language in his head clearly? I would assume we have been studying this thing, it is kind of complicated, but when I hear someone say the ratepayer is going to pay it, I really want to know whether or not that is true.

The PRESIDENT. I think the gentleman is about to confirm it.

Senator BRIGHTBILL. Mr. President, I am going to turn to section 2810 of the bill, and it provides that, "This section is not intended to cause a shift in proportional tax obligations among customer classes or individual electric distribution companies. It is the intention of the General Assembly to establish this revenue replacement at a level necessary to recoup losses that may result from the restructuring of the electric industry and the transition thereto."

Senator WILLIAMS. Mr. President, if I could comment very briefly.

The PRESIDENT. You may.

Senator WILLIAMS. Mr. President, what I heard in that recitation were the key words "among customer classes," which had to do only with relieving any, I guess, burden or discrimination among customer classes as opposed to not eliminating any shift in taxes on the ratepayer as such. That is just my

plain reading of it. Someone else could have a different interpretation, but that is the way I read it.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I think the gentleman from Philadelphia, Senator Williams, clearly indicated that the answer that the gentleman from Lebanon, Senator Brightbill, gave did not really answer his question. The question that was asked was, is there a provision in the bill that prevents these tax losses from being passed on to ratepayers? The answer that came back from Senator Brightbill is that, yes, there is a provision in there that prohibits discrimination among the ratepayers as to who will pay it, but the fact still remains that ratepayers will pay these deficits in taxes. Mr. President, normally I would not be too upset about this because we have figured that the reduction in the PURTA tax, which is the principal tax regarding utilities, is about \$39 million. Mr. President, that is not a substantial amount of money. And I also understand that there is a timeframe in here, I believe it is 4 or 5 years, whatever it is, and then this goes away.

Mr. President, let me tell you a little bit of history. Back in the 1980s the utility companies decided that they did not want to pay all the capital stock and franchise tax, but they decided that because they were taking coal, and in some cases uranium, and converting it into electrical energy, they were in fact manufacturers. And, Mr. President, if there is one group of taxpayers that this Commonwealth is very good to, it is manufacturers. And, Mr. President, if they would have been successful in that argument, the amount of money lost to the Commonwealth would be somewhere in the neighborhood of \$300 million to \$400 million.

The Commonwealth Court, in its opinion, said that, no, you are not a manufacturer, you are not entitled to this because you are, in essence, a regulated utility and therefore you cannot take advantage of the manufacturer's exemption. They also got into some esoteric arguments at the time talking about the fact that they were taking coal and converting it into energy, but they were not really manufacturing the coal into another coal substance, and that was another reason why they were not entitled to the deduction.

Mr. President, since that time, we have even liberalized the exemption in the area for manufacturing to the point that the second argument of the Commonwealth Court probably is no longer applicable. But the first argument, if this bill passes, will be definitely applicable. If this bill passes, Mr. President, the ratepayers of Pennsylvania, and for those people watching PCN who do not know who ratepayers are, they are everybody in Pennsylvania who gets an electric bill. The people of Pennsylvania who get electric bills, Mr. President, are the ones who pay the rates.

Mr. President, if this goes through, the utility companies will no longer be a company that generates electricity and then transmits it along wires to your home. They will be two companies. They will be, on the one hand, the company that owns the generator and, on the other hand, the company that owns the transmission line. When they do that, Mr. President, the

company that owns the generator will no longer be regulated by the Public Utility Commission because it will not be a monopoly. Anybody at that point in time can build an electrical generator system. There are hundreds of these systems throughout Pennsylvania now. There are hydroelectric dams, little ones that run here and there. There are companies that use culm and generate electricity, cogen facilities, they are not regulated. So when that occurs, these utility companies can go back and say we are now entitled to the manufacturer's exemption.

And because of this little piece in the law, guess who is going to pay the loss of \$300 million to \$400 million? Joe Lunchbox, who has the audacity to turn his lights on when he comes home from work, lets his refrigerator run, and turns on his television set. And guess who gets the break? The guys that get the break are the big utilities. This will be the largest transference of wealth between poor and middle class to affluent corporations that has ever occurred in America. Yet we treat this lightly. The argument that is made on this floor is, gee, if we do not do this, we will have to cut back on services. I submit to you that if you put this in, the people that may have to suffer will be the utilities.

Mr. President, I want to tell the people back home what has been going on up here in Harrisburg regarding this bill in the last few weeks. This was sold as consumer legislation, something to help out consumers and small businesses. We up here in Harrisburg, along with our leader, Dick -- Tom Ridge rather; I am going back to the Thornburgh days. Thornburgh would not have had the guts to do this one -- along with our leader, Tom Ridge, are going to do something for the little guy, because you know, no one has done anything for him lately. Well, those of you out there in never-never land, grab your pocketbooks and run for the hills. I have never, and I have been in this Senate almost 20 years now, I have never seen as many lobbyists work a bill on behalf of consumers in my entire career. There were so many lobbyists in the corridor between the office of the gentleman from Lackawanna, Senator Mellow, and my office because we had amendments today that we had to almost push ourselves through to get back to our offices. And not only do we have here today that legion of lobbyists--

Senator WILLIAMS. Mr. President,

The PRESIDENT. Would the gentleman yield.

POINT OF ORDER

The PRESIDENT. Senator Williams, for what purpose do you rise?

Senator WILLIAMS. Mr. President, I rise for a point of order.

The PRESIDENT. The gentleman will state his point.

Senator WILLIAMS. Mr. President, I cannot hear the speaker because of the voices over there talking loudly. Even the whispers are loud.

Senator FUMO. Mr. President, in addition to that legion of lobbyists who are stationed here on a regular basis and paid for by the utility companies, in addition to that legion, they have then gone out and hired just about every contract lobbyist that

I can see. In fact, I said in the Committee on Rules and Executive Nominations, and I mean this quite sincerely, if you are a lobbyist in Pennsylvania and you have not been hired by one of the utility companies to work on this bill, you should be insulted. They have hired everybody in creation. Now, me, just being a little kid from South Philly, I get a little suspicious when I see that kind of activity up here on behalf of my constituents, because I wonder, if this is so consumer-oriented and if this is going to result in savings to consumers, who is going to pay for all the lobbyists? I know they are not here on a pay-as-you-go basis, they are paid upfront with big checks. I have to ask myself why do those people at PECO, for example, in Philadelphia, why do those executives who make \$2 million-plus a year want to go out and spend another \$2 million or \$3 million on lobbyists to help their ratepayers when all they have to do is help them? So that makes me a little bit suspicious.

Mr. President, what we have before us today is a bill that in its current form, even though it talks about deregulation, even though it talks about consumer choice, is the biggest windfall of cash for the public utilities of this Commonwealth at the expense of ratepayers that has ever happened. The robber barons, back in the 1800s when Pennsylvania railroad lobbyists sat on this floor, could not have done better for their clients than this bill does in its current form at the request of Republicans.

Mr. President, this bill will ensure -- there is one good thing about this bill. I am told that no Republicans are going to vote for our amendments. Good amendments, we think. No Republicans are going to do that. And I was lamenting after the elections of last--

POINT OF ORDER

Senator BRIGHTBILL. Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I was desirous of giving the gentleman plenty of opportunity to see where he was going. As I understand the issue--

Senator FUMO. Mr. President, I thought that was the role of the Chair.

The PRESIDENT. Senator Brightbill, for what purpose do you rise?

Senator BRIGHTBILL. Mr. President, I rise to raise a point of order. I think the gentleman's debate extends far beyond the issue that is presently before the Senate, which is the Afflerbach amendment. The gentleman knows that there is not only this amendment which we must debate but several other amendments. I think there is a Fumo amendment which he plans to offer, which includes a mandatory 10-percent rate cut, and I would suggest to the gentleman that this particular line of debate might be more relevant on the bill, if it is relevant at all. We can debate that at that time. But I would ask the Chair to admonish the gentleman to stick to the amendment and stick to the issues.

The PRESIDENT. Thank you, Senator Brightbill, and, Senator Fumo, I had the impression you were going to finish up.

Senator FUMO. I was finishing, Mr. President. I thought I was discussing the amendment in the bill.

The PRESIDENT. Then I am sure you will finish up.

Senator FUMO. Mr. President, I would like to admonish Senator Brightbill with the words of a very famous Democratic President, Harry Truman: If you cannot take the heat in the kitchen, get out. You know the nastiness of what you are trying to do here tonight.

Senator BRIGHTBILL. Mr. President.

The PRESIDENT. Senator Brightbill, I will handle this.

Senator Fumo, I would ask you to finish up as it relates to the Afflerbach point.

Senator FUMO. Mr. President, the amendment of the gentleman from Lehigh, Senator Afflerbach, is necessary to prevent a huge transference of wealth from the ratepayers of this Commonwealth to the utility companies of this Commonwealth. Senator Afflerbach's amendment is necessary to prevent a possible \$300 million to \$400 million rate increase.

Mr. President, in closing, all I can say is, as a result of the last elections, I was a little depressed around here. I wondered if we would ever get in the Majority during my lifetime. This bill, I am happy to say, will ensure that Democrats will take over this Chamber when ratepayers figure out the screwing they are getting from the Republican Majority in this Senate tonight.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Northampton, Senator Uliana.

Senator ULIANA. Mr. President, would the Minority Appropriations chairman, the gentleman from Philadelphia, Senator Fumo, consent to brief interrogation? I want to ask the gentleman about a few things on the manufacturer's exemption.

The PRESIDENT. Would the gentleman from Philadelphia, Senator Fumo, consent to interrogation?

Senator FUMO. I will, Mr. President.

Senator ULIANA. Mr. President, I just want to be correct in that the gentleman was talking about the manufacturer's exemption being on generation only and those power plants that would generate electricity and not on the entire system. Is that correct, Mr. President?

Senator FUMO. Mr. President, that is my belief. The only place they could go on this.

Senator ULIANA. Mr. President, are there not now non-utility generators that only own generation capacity and own no distribution lines?

Senator FUMO. Mr. President, I assume that there are.

Senator ULIANA. Mr. President, why have not those non-utility generators, many of them owned by very bright, savvy, sophisticated companies right outside of my district and the district of the gentleman from Lehigh, Senator Afflerbach - U.S. Generating, owned by Bechtel - why have they not then gone to the courts to try to get a similar manufacturer's exemption?

Senator FUMO. Mr. President, those particular companies still have the power of eminent domain and therefore are not permitted to do so.

Senator ULIANA. Mr. President, what then would be different? I am not a highfalutin lawyer from Philadelphia in a very sophisticated law firm. What then would be the difference from a generation company owned by "X" utility which has been split from their distribution arm, what is the difference between that company and a present nonutility generator?

Senator FUMO. Mr. President, at the point in time when they split off-- Excuse me, I am waiting for staff to help me with this.

Senator ULIANA. Mr. President, no problem. Please, this is an important point. I think that the gentleman from Philadelphia brings up a very interesting point that needs to be explored so we can all make a very valued judgment on this amendment.

Senator FUMO. Mr. President, it is our belief that even hydroelectric power generators that are tying up the natural resources of water and things of that nature have the power of eminent domain. At the point in time when you split off the utility of a coal generating facility, for example, and a uranium nuclear power plant, maybe the nuclear power plant, depending upon the authority to take water from the rivers, you might be able to argue against that, but the coal generator clearly can do that, and it is my belief that given the weight of the circumstances, what would happen is that the bigger utilities who can afford the legal expertise to go in and do this battle would eventually prevail, and you are right, that would then start a domino effect on those other generators, except for maybe hydroelectric.

Senator ULIANA. Mr. President, maybe we need to look at the power of eminent domain that the Minority Appropriations chairman talked about. Could we have some specific differences that make Bechtel Corporation, U.S. Generation, they have a lot of money to hire the best and most talented attorneys in the country, the same amount of ability that maybe PP&L in my area has to hire attorneys, what would be different from PP&L's generation company splitting off and the U.S. Generating facility in Senator Afflerbach's district? If we could just explore, for my own edification, the difference and the reason why eminent domain is so important here, I would appreciate that.

Senator FUMO. Mr. President, we think the eminent domain is important, and there are some companies out there now that I think could probably apply for this, and you are correct. Why they have not, I have no idea. If I may, the point of the amendment of the gentleman from Lehigh, Senator Afflerbach, is we do not care if they do apply or do not apply. Win or lose, the ratepayer will not get stuck with the potential bill. That is all we are saying. We are not mandating in this bill that they automatically get this deduction. All we are saying is that Joe Lunchbox and the consumer should not be at risk. It should not be he who worries about this because, believe me, he does not have a lawyer to get involved in this process in any way, shape, or form. All he does is bend over and sees what happens to him.

The PRESIDENT. Senator Fumo.

Senator ULIANA. Mr. President, I was not offended.

The PRESIDENT. I think the Chair probably speaks for an awful lot of people in this Chamber and in Pennsylvania who would prefer that you use other examples.

Senator FUMO. Mr. President, I do not believe I used anything wrong in my example, because what is going on here tonight to Joe Lunchbox is worse than that.

Senator ULIANA. Mr. President, if we could get back to the question, I do not mean to belabor this point, but again, I am not an attorney. There are a number of Members of this General Assembly who are not attorneys. What is so significant about the power of eminent domain that governs U.S. Generating's facility in Allen Township, or I think maybe it is actually in East Allen Township, that is different from PP&L's Martins Creek generating facility at the other end of Northampton County?

Senator FUMO. Mr. President, what we are saying is that I do not necessarily know that there are huge differences, depending upon the individual power plant, the methodology used, and whether or not it is taking natural resources by eminent domain. Senator Afflerbach's amendment does not get into that. Senator Afflerbach's amendment merely states that in the event that there is such a circumstance, which I personally believe is going to happen, I think it is going to be \$300 million or \$400 million. I could be wrong, it could be \$100 million. The issue is that whether it is 10 cents or a billion dollars, that the ratepayer does not have to bear the burden. The people who want this should have to bear the burden, not the ratepayer. And once you open up the door to new litigation, you always open up the potential. Senator Afflerbach has said we do not want to deal with the potential. We do not want that little guy, the consumer and the small business person, to have to deal with that risk.

Senator ULIANA. Mr. President, if I interrupt the gentleman, please tell him that he can stop me, I appreciate that.

Mr. President, I will ask this question of the Minority Appropriations chairman because I know he has great respect from this whole body for numbers and he has a great reputation for numbers. The taxes which Senator Afflerbach laid out on page 66, have those receipts for those taxes been increasing over the past, let us just say, 4 years? Let us take out 1991. I will read them off. The taxes on page 66, and I will just read them for your edification: corporate net income tax, capital stock and franchise tax, sales and use tax, public utility realty tax, utility gross receipts tax. Put away any increases in the rate of those taxes, whether there were percentage increases, have the overall revenues for those, since, say, 1993 and the last 3 years, been increasing?

Senator FUMO. Mr. President, the rates for the PURTA tax and the utilities gross receipts tax--

Senator ULIANA. Mr. President, no, net revenues. Take out the rates, because we had a rate increase in most of those in 1991.

Senator FUMO. Mr. President, just the general growth in the numbers, they have been increasing.

Senator ULIANA. Mr. President, so would it be correct to say that we are going to, in this legislation, cap those so that they cannot grow any more, and since those taxes are passed

on to the consumers through bypassable rates that actually we will be limiting the amount of growth in rates for those consumers based on the fact that we are now, if we would not go into a competitive market in the future?

Senator FUMO. Mr. President, what I said to the gentleman, and I do not know if he was paying attention, the bottom two taxes have been growing. The top two would be the responsibility of the utility, and if they were to shrink, then those differences would have to be paid by the consumer for the point that the growth in the bottom, which is not huge, would never be able to make up the loss in the other taxes.

Senator ULIANA. Mr. President, so the last two are what the gentleman is concerned about here?

Senator FUMO. Mr. President, no, I am concerned about all of them. I am concerned about the fact that the ratepayer would have to bear the burden no matter which of these taxes went up or down. And what we are saying is he should not have to bear it. This was not his idea. I did not get one phone call from one consumer or one letter saying to me, pass this bill.

Senator ULIANA. Mr. President, I appreciate that. So what the gentleman is saying then is since we will have these huge corporate taxes, under his scenario, which are going to be reaped by these public utilities, should not those huge corporate taxes increase, number one, the corporate net income tax?

Senator FUMO. Mr. President, no, they are going to get huge tax breaks, not increases. That is what my complaint is. If they were going to pay more tax--

Senator ULIANA. Mr. President, but they are going to have huge revenues, though?

The PRESIDENT. Senator Fumo, complete your point.

Senator FUMO. Mr. President, they are not going to have more revenues when they split the companies up. What you are going to have is the generating company over here creating money not being in this tax base, so that growth is not going to be here to offset the losses from PURTA, which we think, conservatively, are \$39 million. That is a big number. We do not have to worry about that, but I really think the bigger number comes in the manufacturer's exemption. So you are not going to have the growth in corporate revenues to affect the CNI in this sphere of influence that is going to affect the ratepayer. You will have growth, it is out here, and, if anything, the Commonwealth might reap a bonanza from that. I do not know yet. But if you have the reduction in the manufacturer's exemption that I talk about, you really, in effect, are having a hidden tax passed on to utility users, and it could be a very high tax.

Senator ULIANA. Mr. President, I would like to thank the Senator from Philadelphia for laboring with me on this. I appreciate his patience and his attention to answering all my questions.

I would just like to, if I could, very briefly comment on the amendment to say that I hope the Members will oppose this amendment, because what it does really is it is based on a faulty premise. We have talked, Mr. President, in my discussion with the Senator from Philadelphia, about the fact that we have no difference right now between a nonutility generator

and what generation companies will look like in the future. In fact, if lots of people who talk about this envision other generators popping up throughout the State, they will have to face the same tax liability and impact that present nonutility generators face. So I hope that the Members of this body will not make their decisions based on the false premises and the potential misleading information which has been presented, and I hope we can get on to voting on this entire legislation.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Mr. President, this debate over the Afflerbach amendment has, in my view, somewhat confused and misled, I believe, the Senate about what we are really talking about. What we are talking about is the revenue neutral reconciliation charge in the section of the bill that the gentleman from Lehigh, Senator Afflerbach, would delete which provides for that charge. Very simply, as Senator Afflerbach indicated, presently this bill says, and I believe accurately, that utilities in Pennsylvania pay approximately \$984 million in taxes, a variety of taxes. And they are set forth in the bill and the amounts that they pay are set forth in that bill. And what we are saying is that during the transition period, the 3- or 4-year period when we go from a regulated monopoly system to free enterprise for electric generation, if those taxes go up, some may go up, some may go down, we do not know exactly what is going to happen, but whatever happens, each year the Public Utility Commission is authorized to create a revenue neutral reconciliation charge to ensure that the Commonwealth will not lose the \$984 million. That will not go down, nor will it go up. That figure will remain constant, and that is all we are talking about.

We are not talking about shifting taxes from utilities to the customer. We are not talking about new taxes. In fact, the argument because of the regulation of the public utilities now is that the consumer actually pays these taxes now because these taxes are passed through the utility bill to all customers. And what we are saying is that while we are in that phase-in period when some customers will be on free enterprise and some will not, the revenue that goes to the Commonwealth will remain neutral, will remain the same, and at the end of that 3-year period, whatever that revenue neutral reconciliation charge is at the end of that transition period, that 3-year period, it will remain that until the legislature decides to step in in the future, either to raise it or to lower it. That is all we are talking about. It is not a transfer. It is not grabbing money from the little guy and giving it to the big utilities. It is simply a reconciliation so that the revenue of the Commonwealth remains the same.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I would just repeat the point that the gentleman from Dauphin, Senator Piccola, just made, and that is what this bill recognizes is that electric utility customers currently pay as part of their, I think it is \$15 billion in rates, they pay \$984 million in taxes. Now, those

taxes are not just simply a direct tax on electric rates. Those taxes are divided up and many are taxes that the utility companies themselves pay and consider as costs, and then simply under a regulatory system simply pass those along to the ratepayer.

And here is an example: corporate net income tax, \$181 million. Here is the interesting point. If next year we were to reduce the corporate net income tax by one-half so that these utility companies would only be paying \$90 million, they lose the benefit of that because they have to somehow pass through and generate, because of this bill, \$181 million. The key is that this is a revenue neutral provision. There are risks on all sides. The utilities have taken certain risks, the government has taken certain risks, but we are not seeing a situation where, for example, PECO, as the gentleman from Philadelphia, Senator Fumo, reports, does not absorb these taxes. They pass the taxes on to their customers. The utility bill reflects those taxes, and since their utility bill reflects those taxes, there is not going to be an increase because of those taxes because we have written into the law that, number one, rates cannot go up and, number two, that these revenues are frozen. That is what we are doing here, Mr. President, and I would ask for a negative vote.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, following up on the logic of the gentleman from Lebanon, Senator Brightbill, about these wonderful utilities and that if we lowered their CNI the rates would go down and then when we raise their CNI it goes into the rates--

POINT OF ORDER

Senator BRIGHTBILL. Mr. President, I would raise a point of order for his mischaracterization of my debate.

Senator FUMO. Mr. President, well, then will the gentleman stand for interrogation?

The PRESIDENT. Senator Fumo, we are going to move the amendment, and the fact that it is on the floor, I am sure you can carefully find ways to recharacterize that and make your point.

Senator FUMO. Mr. President, no, what I want to do is interrogate him then, because I obviously misunderstood him and I might not have remarks.

The PRESIDENT. Senator Brightbill, will you stand for interrogation?

Senator BRIGHTBILL. Sure, Mr. President.

The PRESIDENT. Senator Fumo, continue.

Senator FUMO. Mr. President, did the gentleman indicate in his last remarks that if the corporate net income tax were to increase and utilities had to pay a larger number than is listed in there, and it is not in front of me, I think it is \$181 million, whatever it is, if we raised it a percent, for example, and their taxes went up \$20 million or \$30 million, did the gentleman not indicate then that the rates that people pay on utilities, that they could go to the PUC and get that passed on to the ratepayer?

Senator BRIGHTBILL. Mr. President, under the bill there is a provision that provides if--

Senator FUMO. Mr. President, no, I am talking about currently; not under the bill, under current PUC law.

Senator BRIGHTBILL. Mr. President, currently, when their costs go up, they can apply for rate increases, yes.

Senator FUMO. Mr. President, when the costs go down, can they do the same and apply for rate decreases?

Senator BRIGHTBILL. Mr. President, as far as I know, they can apply for reductions.

Senator FUMO. Mr. President, that is what I thought the gentleman said. I thank the gentleman.

Mr. President, I just recall, and I recall it because I fought it so vigorously, that we in this Chamber reduced corporate net income taxes and we did not do it for the little guys, we did it for the big guys, and some of the biggest guys, if you will, that got a savings and a reduction in their cost of corporate net income tax were the big public utilities. And that happened about a year or two ago right when Congressman Ridge became Governor.

Mr. President, I do not know as of today of any one of those big utilities that went to the PUC and said, the Governor lowered my taxes, therefore my costs went down, therefore I am going to pass the savings on to you. I do not remember that happening once, and if it did I will stand corrected. So the gentleman wants me now to believe that these same magnanimous protectors of the public are going to do what is right. Mr. President, I do not believe that. I do not believe that any monopoly or any utility that is as large as some of these companies should be given that kind of trust. Now, they may be very honorable people, but we just gave them a chance to prove themselves. We lowered their taxes, and not one of them went in and asked for a rate decrease, but had we raised their taxes, I am willing to bet you every one of them would be beating down the door of the PUC saying pass it on to the ratepayer.

Mr. President, that is what is wrong and that is why Senator Afflerbach's amendment is so important, because having given them the chance already, they did not do what the system allowed them to do. I am fearful that they will get a \$300 million reduction in their capital stock and franchise taxes when they get the manufacturer's exemption, and then without Senator Afflerbach's amendment, they will get the windfall, there will be a hole in the budget, and the ratepayers will pay for it. That, Mr. President, is, yes, revenue neutral. Revenue neutral, as was said by the gentleman from Dauphin, Senator Piccola, in the sense that the Commonwealth will get no more, but the Commonwealth also, by definition in this bill, will get no less. And when the Commonwealth does not lose money because somebody's taxes go down, that means that somebody has to pay the money. And under this bill, the people who pay that money are the ratepayers.

Mr. President, this should not be revenue neutral. It should be ratepayer neutral, if anything. But again, we do not see that here. What we see is a bill on behalf of special interests that is going to hurt consumers and transfer hundreds of millions of dollars in wealth from Joe Lunchbox to Joe Executive in the upper floors of the utility company office buildings. That simply is not fair. I want it neutral, yeah. I want it revenue neutral

and Senator Afflerbach wants it revenue neutral, at the ratepayer level, not at the Commonwealth level.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, it is obvious that the gentleman from Lebanon, Senator Brightbill, and the gentleman from Dauphin, Senator Piccola, and I have a significant difference of opinion as to whether or not there is going to be a revenue transfer. The gentleman, Senator Brightbill, offered a suggestion a few moments ago that truly makes my point, and that is this: The gentleman suggested that if there is a reduction in the CNI tax rate so that the CNI tax obligation is reduced from its present base of \$181 million to \$90 million, who is going to make up the difference? The only mechanism in this bill to make up the difference is the RNR, and it says that that difference shall be made up by applying a gross receipts tax across all classes of ratepayers.

But as we all know, when a CNI tax rate is reduced and the company pays less CNI tax, where does that excess money go? It obviously goes to reinvestment in the company or it goes to shareholder dividends. It does not go back to the ratepayer in most instances. Yet the bill would require the ratepayer to make up that reduction in CNI tax. That is the problem I find with the RNR, in that it does in fact shift responsibility for recapturing revenue from one source to another source, and the bottom line source is a gross receipts tax on the ratepayer.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, I would like to comfort the gentleman from Lehigh, Senator Afflerbach. There is something called the State tax.

POINT OF ORDER

Senator FUMO. Mr. President, if I may rise to a point of order.

The PRESIDENT. The gentleman may state his point.

Senator FUMO. Mr. President, since we are being so ticklish on the rules here, I believe that the gentleman from Lebanon, Senator Brightbill, has already spoken twice and this would be his third time. I have restricted myself to twice, because I anticipated that when I got up for the third time someone would do something, so I feel compelled to make sure the rules are followed.

The PRESIDENT. You are correct, and that also applies to Senator Afflerbach.

The Chair recognizes the gentleman from Philadelphia, Senator Williams, to complete the debate.

Senator WILLIAMS. Mr. President, I have one question of interrogation, and I ask the gentleman from Lebanon, Senator Brightbill, and the gentleman from Lehigh, Senator Afflerbach, if they would stand for brief interrogation.

The PRESIDENT. We will start with Senator Brightbill, and only Senator Brightbill.

Senator WILLIAMS. Mr. President, from the discussion, it seems as though if you have \$100 and because of competition that is reduced to \$50 in tax revenues, and if in fact, as we

have all agreed, that would be passed on to the taxpayer to make up the difference with the State revenues, it seems as though it would be at a tie. In other words, nothing really would change upward or downward.

The PRESIDENT. Senator Williams, your question.

Senator WILLIAMS. Mr. President, my question is, is that correct that if the scenario as we discussed it, the rate or whatever the ratepayer is going to pay would essentially amount to the same, is that correct?

Senator BRIGHTBILL. Mr. President, as I understood the scenario, the answer would be no.

The PRESIDENT. Does that conclude your questioning of Senator Brightbill?

Senator WILLIAMS. Mr. President, yes, it does.

The PRESIDENT. Senator Afflerbach, will you stand for interrogation?

Senator AFFLERBACH. Yes, Mr. President.

The PRESIDENT. Senator Williams, carry on.

Senator WILLIAMS. Mr. President, I would address the same question to Senator Afflerbach.

Senator AFFLERBACH. Mr. President, I think this is an instance where the gentleman from Lebanon, Senator Brightbill, and I agree. The cost to the ratepayer would not remain the same. It is my position that the ratepayer would in fact be picking up an additional cost that would do away with any savings they may achieve through the generation process.

Senator WILLIAMS. Thank you, Mr. President.

Mr. President, could I make my final comment?

The PRESIDENT. You are in order, and that will be it for you. The Chair offers that remark on the basis of tracking remarks and those who are interrogating and those who are offering fresh comment.

Senator WILLIAMS. Mr. President, it is my second time, as far as I know.

It seems to me that, at the very best, it is clear that the ratepayer would not enjoy any reduction whatsoever because if there were a reduction in rates, where there would be a gap in revenue, then that would have to be made up by the ratepayers, so no way could his rate go down. The gentleman from Lehigh, Senator Afflerbach, on the other hand, says there are reasons in addition to that mechanism why the rates probably would go up. I do not find that there is any way under this particular revenue neutral provision that the ratepayer could gain any reduction at all during that transition period of time, and in fact, it seems as though, if Senator Brightbill is correct, it could go up. And I would urge, because of those reasons, to support this amendment, because our very purpose here is to achieve a transition for the reason of getting the reduction. The mechanism employed will guarantee no change but may also promote, during the transition, an increase.

The PRESIDENT. With that, we will proceed to the question at hand.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were required by Senator AFFLERBACH and were as follows, viz:

YEAS—21

Afflerbach	Hughes	Musto	Stewart
Andrezeski	Kasunic	O'Pake	Stout
Belan	Kitchen	Porterfield	Tartaglione
Bodack	LaValle	Schwartz	Wagner
Costa	Mellow	Stapleton	Williams
Fumo			

NAYS—29

Armstrong	Hart	Madigan	Salvatore
Bell	Heckler	Mowery	Shaffer
Brightbill	Helfrick	Peterson	Thompson
Corman	Holl	Piccola	Tilghman
Delp	Jubelirer	Punt	Tomlinson
Fisher	Lemmond	Rhoades	Uliana
Gerlach	Loeper	Robbins	Wenger
Greenleaf			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. Senator Wagner and Senator Rhoades have returned, and their temporary Capitol leaves are cancelled.

And the question recurring,
Will the Senate agree to the bill on third consideration?

FUMO AMENDMENT A7963

Senator FUMO offered the following amendment No. A7963:

Amend Sec. 4 (Sec. 2802), page 22, by inserting between lines 4 and 5:

(16) It is the intent of the General Assembly to require and enable electric utilities to monetize a portion of the competition transition charge for residential and small commercial customers so that these customers will receive rate reductions of no less than 10% for 1998 continuing through 2002 or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter.

Amend Sec. 4 (Sec. 2802), page 22, line 5, by striking out "(16)" and inserting: (17)

Amend Sec. 4 (Sec. 2802), page 22, line 13, by striking out "(17)" and inserting: (18)

Amend Sec. 4 (Sec. 2802), page 22, line 21, by striking out "(18)" and inserting: (19)

Amend Sec. 4 (Sec. 2802), page 23, line 5, by striking out "(19)" and inserting: (20)

Amend Sec. 4 (Sec. 2802), page 23, line 9, by striking out "(20)" and inserting: (21)

Amend Sec. 4 (Sec. 2802), page 23, line 16, by striking out "(21)" and inserting: (22)

Amend Sec. 4 (Sec. 2806), page 42, by inserting between lines 14 and 15:

(1) The restructuring plan shall provide for reduced rates for residential and small commercial ratepayers of no less than 10% for 1998 and continuing through 2002 or until an electric distribution utility is no longer recovering its transition or stranded costs through a competitive transition charge or intangible transition charge and all customers of an electric distribution utility can choose an alternative provider of electric generation, whichever is shorter.

(2) Rate reductions required by this chapter may be avoided, delayed or suspended in accordance with the following:

(i) No avoidance, delay or suspension shall be permitted except by a rate reduction suspension order of the commission in accordance with the procedures established under subparagraph (ii). A rate reduction suspension order may be made only upon a finding based on clear and convincing evidence, as determined by the commission, that the suspension is necessary to avoid requiring the electric utility to provide service at a substantial loss, which loss cannot be avoided by reasonable efforts of the utility.

(ii) A utility requesting a rate reduction suspension order must petition the commission at least 120 days prior to the date of which the rate reduction would be required under this chapter and approval of the restructuring plan by the commission. The contents of the petition and the process for a hearing on the petition shall be established by the commission. If the commission does not issue an order within 120 days after the petition is filed, the petition shall be deemed denied.

(iii) All rate reduction suspension orders must be agreed to by at least three commissioners. A rate reduction suspension order may be conditioned upon such actions by the requesting utility as the commission determines to be appropriate, provided that no such order shall suspend a rate reduction for more than two years. If a utility requests an additional rate reduction suspension order to be effective at the end of the term of a current order, a new petition in accordance with subparagraph (ii) must be filed.

On the question,
Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, having watched with amazement the last consumer amendment fall 29 to 21 along party lines, I am not overly optimistic that this will not be the same. But, Mr. President, I have an obligation to come to this Chamber and try to get some of my Republican colleagues to share some compassion for the ratepayers of Pennsylvania, actually the consumers of Pennsylvania. What this amendment says is basically that there shall be a 10-percent reduction in the cost of electric for residential payers and small business operators. Plain and simple, Mr. President, that is it.

We have all heard the promises about what this bill will do for consumers. We have heard it is the greatest thing since sliced bread, and we have heard that from some of the highest paid lobbyists in America, hired by the utility companies to sell us that snake oil. Now, Mr. President, I do not necessarily believe that this bill is going to help out Joe Lunchbox going to work tomorrow morning if he has a job. Mr. President, what we say in this amendment is that we are at least going to guarantee that there will be a 10-percent reduction in rates for every residential and small business ratepayer in Pennsylvania, the argument being if the huge corporations, i.e. public utilities, are going to save billions of dollars, they should at least share some of that money with the people who give them profits.

Mr. President, this is a unique business, generating electricity. It is not like any other, because it is a monopoly. And I think it is important to talk about monopolies in order to explain this amendment. When you are the only person who practically can perform a service, you are then considered a

monopoly, and monopolies are not always evil things. They can be when we had the robber barons in the 1800s, but in our society we said, yes, we do not want 15 different power lines strung along the wires and each person deciding they want that utility company or that one or that one. So many years ago when technology was not available as it is today, we said there is only going to be one power line up there, and only one company generating that electricity. But because of that, the public needs protection from this monopoly because obviously if they are the only one in town, they have you where they want you, and they can raise your rates to the point that you will go bankrupt.

So we set up the Public Utility Commission to regulate by law those monopolies. There are many people in Pennsylvania who pay electric bills and phone bills who kind of think they do not think we did such a good thing for them. They look at that utility bill every month and wonder why am I paying this kind of money for electricity? So there should be some suspicion on their part when we tell them in this particular bill that the most important issue to be decided, that being the issue of stranded costs, will be determined by the Public Utility Commission, the same commission that took not very well the pressure of those utility companies in the first place to allow them to build these huge plants that now give us enormous excess capacity.

Mr. President, this is the only business in the free world where the people who own the company, the shareholders, get guaranteed profits, but when there is a loss, it is paid for by the consumer. Only the utility companies would have the audacity in a free enterprise system to demand that.

Mr. President, I am fortunate enough in my life that I had the opportunity to get a master's in business administration from the Wharton School at the University of Pennsylvania, and I do not say that in a braggadocious way, but I do say that in a way that I understand what business does and how it works. Mr. President, every other business, if you and I decide we are going to open up a haberdashery store--and I use that example because Harry Truman at one time opened up a haberdashery store--and we pool our money together and we sell some stock to some of our friends and we say we are going to have the finest clothes and hats and we are going to make a killing, and when we make that money we are going to give some back to our shareholders and we are going to do great, in that scenario, Mr. President, if our store does not make it, if we overprice our neckties and our hats and there is some kind of recession coming in where people are losing their jobs and they right now only need food, they do not need hats and ties, we are going to lose. We are going to go bankrupt, just like Harry Truman did out in Missouri.

When that happens in any other business, we lose our money. The shareholders who invested their money with us lose their money. That is the American way. You put your money up; if you win, you win. If you lose, you lose. It is called risk. It is called risk capital. It is called venture capital in those areas where the venture really is a little hairy and you do not know where it is going to work. But, Mr. President, under this bill, what happens is this: Utility companies came in years ago

and said, we want to build, and I know in the case of PECO in southeastern Pennsylvania, we want to build Limerick II. We want to build a nuclear power plant. We just got one. We think it would be good to build two. They decided to build two. Well, as it turns out a few years later, that management made a mistake. In fact, some of that management is no longer there. So you would say, with the analogy of the haberdashery, well, then they just lose the money, they made a mistake. This bill does not say that.

This bill says they can take all those losses, all that humongous amount of money they invested, which is called stranded costs, and they can bond it, they can get a bond issue and now pass on those costs to the ratepayers. Right now, ratepayers are paying some of those stranded costs because the PUC has to, by law, let them do that. And I remember a discussion with one of the lobbyists when I told him it is unfair for you to ask consumers now to have to pay for these huge generating facilities when you made the mistake of building them in the first place. You know what they had the audacity to tell me, Mr. President? They told me, we did not want to do this. The PUC told us to do this. Therefore, the public ought to pay for this.

Mr. President, I know there are a lot of arguments in favor of term limits. People say we have been around here too long. Well, today is one of those days when it is beneficial to have been around here for a long time, because, Mr. President, I was a Senator when PECO decided to build Limerick. I sat in my office and I was lobbied not only by their lobbyists but by their chief executives and everybody they could throw at me, and I was not alone. Everybody was lobbied. And it was not just one-sided Republican fat cats from utilities. The building trades were in there, too, because they were building this monstrosity. And they said, look, we need the PUC to allow this, to tell them to do it so we could get some jobs. And reluctantly some of us did call that PUC and lobby for them. Some of us did not. I know the gentleman from Allegheny, Senator Bodack, did not, and he is still upset about it.

Mr. President, nobody from the PUC told these utilities to build these power plants. These utilities lobbied for that because they thought they were going to make a killing, and now they find out, Mr. President, that that is not going to happen. And they have come to us and asked us to bail them out, not with taxpayer money like the S & L scandal, this time with consumer money. Ratepayer money. Well, let me tell you what happens to the guy who works in the factory and brings his lunch to work every day in a paper bag or a lunch box. He does not care if his utility bill goes up \$10 or \$20 or if his taxes go up \$10 or \$20; he does not want to pay the \$10 or \$20, period. And, Mr. President, in a free enterprise society, in a capitalistic society, one that conservative Republicans are usually defensive of, Joe Six-pack and Joe Lunchbox would not have to pay the increase in their utility rates or their taxes. The people who would pay would be the ones who took the gamble when they said this was going to generate all this electricity.

But under this bill, that is no longer the case. So we now come today and argue on behalf of those ratepayers, on behalf of those consumer bill payers, that while these big utility com-

panies that pay their executives millions and millions of dollars a year -- I wonder how someone who makes \$25,000 associates in his mind the fact that someone makes \$2 million a year. That is what happens. What this says is that at least that individual will get a 10-percent reduction guaranteed in his rates.

Now, you might say, oh, this is unfair. This is unfair that we would make utilities give something back to the ratepayer. Mr. President, we did it to the insurance companies. When we passed so-called automobile insurance reform, we built in a 10-percent reduction in rates, and not one insurance company went bankrupt, and the rates went down, and on that day all of us went out of here and rightfully got a pat on the back from our constituents that we had finally done something for them that they could see. This does the same thing.

Mr. President, however, because we want to be fair about it, we recognize that there are some power companies in Pennsylvania that have extremely low rates. West Penn Power comes to mind. Their shareholders and management did not go on the foolhardy experiment of billions and billions of dollars for nuclear power plants. They said all we want to do is provide enough power for the people who use it and do it as cheaply as possible. Mr. President, we have no doubt that if we forced a 10-percent reduction on them, they could not sustain it. We know full well that PECO in southeastern Pennsylvania could easily withstand a 35-percent reduction. So what we said in this bill is, if you are a utility that cannot do this and you can then go to the PUC and tell them I cannot lower these rates 10 percent, I need some relief from this mandated reduction, and the PUC is empowered to give you that relief.

Mr. President, the single most deterrent to job creation in southeastern Pennsylvania and therefore this entire Commonwealth has been the high, exorbitantly high, electric rates charged by PECO, formerly Philadelphia Electric. Mr. President, the bill without this amendment does nothing to solve that problem. If you want job creation, and we all know full well that the overwhelming majority of jobs that are created in this Commonwealth are created by small businesses, then you will join with us and give those small businesses a 10-percent reduction in their rates so they can succeed and flourish and hopefully more will sprout up. The big utility users, Mr. President, are already going to be able to wheel their energy direct. They do not need reductions because they are already getting reductions. They can go on interruptible power sources if they use over 10 megawatts of power. They already have available to them discounts and bonuses and savings that the guy who comes home from the factory every night does not.

Mr. President, I would like this to be 20 or 30 percent. I think it might be able to be those kinds of numbers, but we reduced it to only 10 percent because we did not want to be criticized here as being irresponsible on behalf of consumers and taxpayers. Mr. President, we had hoped that by doing that we would have reached a compromise and that people on that side of the aisle would have been able to show their concern for their constituents rather than their contributors. But I do not doubt that this amendment will fall just like the last one, right

along party lines - Republicans voting to kill it, Democrats voting to help consumers.

Mr. President, one of the biggest things that differentiates Democrats from Republicans when they are elected is that we do not forget where we came from. We remember our roots, we remember the people who sent us here, we remember to take care of them whenever we can, and we try to do it in a responsible fashion. When you are going to give the utility companies a windfall like this, it is unconscionable not to force some of that to be shared with the taxpayers, the ratepayers, and the consumers of Pennsylvania. As I said, I know you will not, and as I said before, this will help me see something in my lifetime I was not sure I would see, and that is a Democratic Majority.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Mr. President, this amendment is a very simplistic approach to a very complex issue. The author of the amendment speaks and continues to make comparisons to an industry as if it were going to still be in a monopolistic mode, and that we should mandate this rollback because there would be no incentives on a utility, I should not even call it a utility because they will not even be utilities, they will be electric generating companies, there will be no incentives on these companies to reduce the price of their product. And that is simply not the case.

And I know this is a difficult concept for people to grasp, and perhaps the gentleman is having some difficulty grasping where we are going with this electric competition issue. But we are going to create in the area of generating electricity the same kind of entity that Harry Truman had in Independence, Missouri, in his haberdashery store. They will be subjected to the same kinds of market pressures that Harry Truman was subjected to. And by the way, Harry Truman never went bankrupt, he paid all his debts. So we are not going to have a monopoly or monopolistic companies generating electricity in this Commonwealth. They are going to be subjected to the same market pressures that any producer of a product is going to be subjected to who produces products in Pennsylvania, and they may come in from out of State and offer our consumers a product, electric power, that is cheaper than the utilities that are presently in Pennsylvania and are offering that same product. Our customers, our consumers - residential consumers, commercial consumers, industrial consumers - will have the opportunity to purchase that electric power at whatever competitive price, whatever low price they can get. The utilities will not have a monopoly over the price, they will not have a monopoly over the market. They will be able to sell to whom-ever they can get access to, and they will have access to virtually everyone in the Commonwealth.

Now, I think the test of whether or not this is in the residential consumers' best interests comes I believe with what is the position of Pennsylvania's Consumer Advocate, and if the allegations that the gentleman from Philadelphia, Senator Fumo, has indicated were accurate, I would think that Pennsylvania's Consumer Advocate, who is always an advocate espe-

cially for the residential consumers of electricity, I would think he would have some concerns about it.

I would like to submit for the record a letter that I received, and I am sure that all of the Members of the Senate received it, from Irwin Popowsky, the Consumer Advocate for Pennsylvania. But before I submit that for the record, I would like to quote him on a couple of key points. First of all, the Consumer Advocate indicated in his letter that he has testified in favor of electric competition both here in Pennsylvania before the General Assembly as well as in Washington and has spoken at numerous public forums in and outside of the Commonwealth in favor of electric competition. Secondly, he has indicated to us that he has been part and parcel of the working group that has developed this consensus legislation, and he in his letter praises the efforts of Chairman Quain, chairman of the Pennsylvania Public Utility Commission, for the leadership that he took in bringing all of the interested parties together, including Pennsylvania's residential consumers as represented by the Consumer Advocate.

Now, the Consumer Advocate says, and this is a quote, "From the perspective of consumers, and particularly residential consumers, I support the legislative proposal for several reasons. First, while permitting a reasonable transition over the next several years to competitive retail generation, the bill would maintain complete PUC regulatory authority over the retail distribution function," protecting the consumer. Now, he also says later in his letter, "In addition, while the price charged for generation in the future will be established by the market, rather than by regulation, the PUC and other independent entities will retain authority to ensure the reliability of the utility system." Now, he goes on, "First of all, every customer class is permitted to participate equally in each phase of the transition to competitive access." That means residential, commercial, and industrial consumers alike will have access to all of the benefits of this legislation on an equal basis.

"Perhaps more importantly," he says, "for customers who choose to continue to purchase their generation from their local utility, their overall rates will be capped at current levels for a period of up to four and one half years and the generation component of the rates may be capped for as long as nine years." So there will be no opportunity, even during the transition period, for a utility which still has some of that monopolistic tendency, because we will not be completely into free enterprise for that period of time, there will not be the opportunity to raise the rates. Of course, the Consumer Advocate has produced this specific piece of legislation.

Now, for us, the General Assembly, to adopt the Fumo amendment and to mandate a rate rollback would be simply saying, well, yes, we are going to free enterprise but no, we are not really because we are going to dictate what the market shall charge, what the market will bear. The Consumer Advocate has placed his faith and the faith of his office in this approach to marketing electricity as it is generated here in Pennsylvania. He believes and I believe and I believe a majority of this General Assembly believes that this proposal will result in lower rates, but it will not result in lower rates because the General Assembly passes a law. It will result in lower rates

because the free market will be allowed to work with regard to the generation of electric power. I urge the defeat of the amendment.

(The following letter was made a part of the record at the request of the gentleman from Dauphin, Senator PICCOLA:)

COMMONWEALTH OF PENNSYLVANIA

Office Of Consumer Advocate

1425 Strawberry Square

Harrisburg, Pennsylvania 17120

November 14, 1996

To Governor Ridge and the Members of the General Assembly:

I am writing to express my support for legislation that has been proposed to bring about access to competitive electric generation choices for Pennsylvania consumers. In my view, this bill could create substantial long-run savings for Pennsylvania consumers, while protecting consumers from potential harms during the transition to a competitive retail generation market.

During the last two and one half years, I have had the honor of testifying before Committees of the General Assembly regarding electric competition issues on four separate occasions. I also was the first witness to appear before the Pennsylvania Public Utility Commission in its comprehensive investigation into electric competition that culminated in its Report to the Governor and General Assembly in July 1996. I also have testified before the United States Congress on this issue and spoken at numerous public forums across the Commonwealth.

In my public testimony, I have stated my support for the proposition that the generation of electricity should be subject to competitive forces, and should not remain a part of the monopoly utility structure. In contrast, I have consistently argued that the distribution of electricity ought to remain a regulated monopoly function. I have also stated, however, that even as to generation, I would only support competition if such competition would benefit all consumers. I have argued that if so-called competition simply lowers rates for a few large customers who have competitive alternatives, while raising rates for other consumers, then such a proposal is a sham that should not even be considered.

During the last two months, I have been personally and constantly involved in an intensive collaborative effort, under the leadership of PUC Chairman Quain, to develop a consensus legislative package on electric competition issues for consideration by the General Assembly. Over the course of that process, numerous stakeholders have forged a compromise that the great majority, but not all, of the participants were able to support. None of the parties to that process was able to achieve everything that they wanted in the consensus draft, but each of the parties who ultimately joined in the consensus concluded that the final proposal advanced the interests of the constituencies they represent.

From the perspective of consumers, and particularly residential consumers, I support the legislative proposal for several reasons. First, while permitting a reasonable transition over the next several years to competitive retail generation, the bill would maintain complete PUC regulatory authority over the retail distribution function. Our local electric utilities would retain the obligation to connect and deliver electricity to everyone in their service territories just as they do now, and the rates for such service would continue to be regulated by the PUC. Under this legislation, however, by the year 2001, all consumers would have the ability to purchase their generation from sources other than their own utility, much as consumers today can buy long distance telephone service. Competition in electric generation should drive down the price of such generation in the future and would almost certainly prevent the kind of extreme generation rate disparities that occur in Pennsylvania today and that would not be possible if consumers had the ability to acquire their generation from alternative sources. In addition, while the price charged for generation in the

future will be established by the market, rather than by regulation, the PUC and other independent entities will retain authority to ensure the reliability of the utility system. New electric suppliers will also be subject to strict licensing standards; they must agree to pay all applicable Pennsylvania taxes; and they must comply with the same PUC regulations regarding standards and billing practices that are applied to existing utilities.

Another concern that I noted above was that a poorly conceived competition plan could result in a few large customers receiving low competitive prices while the utility would simply pass on the lost revenues by raising rates to other consumers who do not have competitive alternatives. This type of potential cost shifting is prevented in the proposed legislation in several ways. First of all, every customer class is permitted to participate equally in each phase of the transition to competitive access. That is, residential, commercial and industrial customers all are permitted access to competitive generation sources in the same proportion and on the same schedule. Perhaps more importantly, for customers who choose to continue to purchase their generation from their local utility, their overall rates will be capped at current levels for a period of up to four and one half years and the generation component of their rates may be capped for as long as nine years. While there are exceptions to the rate cap for changes in laws and other matters beyond the control of the local utility, the rate cap cannot be breached through any type of "rate rebalancing" where the utility could raise one customer group's rates in order to make up for competitive losses due to reduced sales or lower rates to another customer group. Also, the rate cap in the bill is a ceiling on rates, but it is not a floor. Customer rates can go down under the cap, but, with the limited exceptions noted above, rates cannot go up.

In addition, even if a customer purchases power from another source, that customer cannot avoid paying a fair share of any utility costs that are "stranded" as a result of competition. Under the bill, all customers would pay a "competitive transition charge" which would cover their share of stranded cost recovery that is found to be just and reasonable by the PUC. It is extremely important to note that **utilities are not guaranteed full stranded cost recovery under this bill**. With respect to utility-owned and operated generation facilities, the PUC must determine the appropriate level of stranded costs that is just and reasonable to recover from ratepayers. While a utility may request full recovery of such costs under the bill, the utility may only receive such recovery to the extent that the PUC determines it to be just and reasonable. It should also be noted that the uneconomic utility costs that would be stranded by competition are currently fully reflected in utility rates. The competitive transition charge thus would not add costs to rates, but would simply be a mechanism to ensure continued recovery of those existing costs that the Commission concludes should still be charged to ratepayers during the transition to a competitive generation market. Moreover, as long as a utility is recovering stranded costs in any transition charge, it will continue to have the obligation to provide generation service to all consumers in its service territory at capped rates.

Finally, the bill contains specific protections for low income customers that are not currently included in the Public Utility Code. The bill states that, at a minimum, it is necessary to continue the protections, policies and services that now assist low income customers to afford electric service, and requires that, as part of its restructuring plan, each utility must file a universal service and energy conservation plan identifying how it will attempt to meet the needs of low income consumers for affordable energy service in the future. The proposed legislation also states that, even after all transition costs are collected, the utility (or an alternative provider determined by the commission) will have the duty to purchase generation at prevailing market rates for any customers who, for whatever reason, do not obtain generation service from an alternate supplier.

There are, of course, numerous other provisions in the bill that I would be happy to discuss with you, but the above consumer protections, coupled with the potential for long-run consumer savings result-

ing from access to competitive generation, are the reasons that I am supporting this consensus proposal.

If you have any questions about my position or about the consensus legislative proposal, please do not hesitate to contact me or Assistant Consumer Advocate Tanya McCloskey, who is also thoroughly familiar with all aspects of this proposal. I look forward to continuing to work with all of you in an effort to bring the benefits of a competitive electric generation market to all Pennsylvania consumers.

Sincerely,

IRWIN A. POPOWSKY
Consumer Advocate

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, the only reason why I would like to be recognized is that I would like to interrogate the gentleman from Dauphin, Senator Piccola, about some of the things he said.

The PRESIDENT. Senator Piccola, do you wish to stand for interrogation?

Senator PICCOLA. Mr. President, yes.

The PRESIDENT. Senator Mellow, proceed.

Senator MELLOW. Mr. President, just for the point of clarification, because the gentleman from Dauphin, Senator Piccola, brought out a few things that quite honestly have me a little confused, and I am going to offer an amendment after the amendment of the gentleman from Philadelphia, Senator Fumo, has been dealt with, the gentleman said that utilities will no longer be monopolies, or something to that effect. I did not have the opportunity to write down exactly what he said, but he did indicate that utilities will no longer be monopolies, and therefore my understanding would have been that if they are not a monopoly that the free enterprise system would establish what the rate they would charge would be. Am I correct in that assumption?

Senator PICCOLA. Mr. President, well, I think I corrected myself because technically the utilities would be both a regulated monopoly as well as a company participating in the free enterprise system, because those utilities that presently generate electric power in the Commonwealth would no longer be regulated as to the price that they would set for what they charge for that power. What they would be is a regulated monopoly with respect to the cost of providing that power through distribution lines, and the electric wires that go down your street and into your home, those would continue to be a regulated monopoly, so there would be a separate generating component of those utilities, and that is why I said they probably should not even be called utilities in the future because they will be electric producing companies.

Senator MELLOW. Mr. President, can the gentleman tell us then if he is referring to both the transmission and the distribution of the electricity?

Senator PICCOLA. Mr. President, the transmission and distribution will continue to be regulated monopolies.

Senator MELLOW. Mr. President, so then at least with that part the utility then would go in front of the Public Utility Commission for the purpose of having an increase to pass on

to the consumer, whether it be residential and/or commercial. Is that correct?

Senator PICCOLA. Mr. President, that is correct.

Senator MELLOW. Mr. President, does the gentleman have any idea what those costs currently are?

Senator PICCOLA. Mr. President, I do not have them here immediately, but I am sure we could get access to them.

Senator MELLOW. Mr. President, the gentleman also talked for a moment about the Consumer Advocate. Can he tell us who appointed the Consumer Advocate?

Senator PICCOLA. Mr. President, I believe the Attorney General appoints the Consumer Advocate.

Senator MELLOW. Mr. President, can the gentleman tell us what Attorney General appointed this Consumer Advocate?

Senator PICCOLA. Mr. President, offhand, I do not know.

Senator MELLOW. Mr. President, does the gentleman know when the Consumer Advocate took office?

Senator PICCOLA. Mr. President, offhand, I do not know. I do know that the Consumer Advocate is confirmed by the Senate.

Senator MELLOW. Mr. President, does the gentleman have any idea when his term will expire?

Senator PICCOLA. Mr. President, I do not know.

Senator MELLOW. Mr. President, and the gentleman does not know who appointed the Consumer Advocate?

Senator PICCOLA. Mr. President, I do not know. I would imagine it would be either the current Attorney General or the one immediately preceding him, but I do not know. I do know, though, that he is charged with certain responsibilities to represent the interests of the consumers of Pennsylvania.

Senator MELLOW. Mr. President, it is my understanding that he was appointed in July of 1990, and then I would assume if that is the case, that Attorney General Preate would have appointed the current Consumer Advocate?

Senator PICCOLA. Mr. President, I would assume that would be the case.

Senator MELLOW. Mr. President, does the gentleman have a letter from the Consumer Advocate? He talked about the fact that he is in favor of competitive rates for electricity.

Senator PICCOLA. Mr. President, yes.

Senator MELLOW. Mr. President, and I think you will find that to be true on a very bipartisan nature. If you talk to the Members of this body, there are a number of Members on both sides of the aisle who are in favor of the competitive market. Does the gentleman have a letter to that effect, that he is in favor of the competitive market for electric rates?

Senator PICCOLA. Mr. President, yes, the letter is dated November 14, 1996, and it is addressed to Governor Ridge and Members of the General Assembly.

Senator MELLOW. Mr. President, did the gentleman use that letter as a reason for opposing Senator Fumo's amendment?

Senator PICCOLA. Mr. President, it is not the only reason. The main reason that I used for opposing Senator Fumo's amendment was the fact that I, as a Member of the Senate Committee on Consumer Protection and Professional Licensure, had the opportunity to sit through five public hearings on

this issue during the last 3 or 4 months, chaired by the gentleman from Delaware, Senator Bell, and never once do I recall the issue of a mandatory rate rollback being seriously proposed or recommended by anyone coming before that committee for consideration as part of the passage of this legislation.

Senator MELLOW. Mr. President, but the gentleman did use that letter as one reason why he would oppose Senator Fumo's amendment?

Senator PICCOLA. Mr. President, that is one of many reasons, yes.

Senator MELLOW. Mr. President, can the gentleman also tell us, in that letter or in any discussion he may have had with the Consumer Advocate, did he specifically state to him that he was opposed to a mandatory reduction, in this particular case a mandatory reduction of 10 percent, in the electric utility rates?

Senator PICCOLA. Mr. President, no, but I read from his letter his thought that the potential for rate savings is so great with this legislation that no mandatory rollback would be necessary because of the free market forces that would be set to work with electric competition.

Senator MELLOW. Mr. President, did he specifically state that in his letter?

Senator PICCOLA. Mr. President, no, he did not, but I drew that from the letter. I did not read the entire letter into the record, but if you read the entire letter, I think you can infer that.

Senator MELLOW. Mr. President, so in other words, the gentleman's interpretation of his letter was that the free market would be the thing that would drive down the rates, and, in his interpretation, his letter stated that we would not need any kind of a mandatory reduction?

Senator PICCOLA. Mr. President, that is correct.

Senator MELLOW. Mr. President, also the gentleman stated that there would be no opportunity to raise rates, there would be no reason to do that. That was part of his final comment. Can he elaborate, based on the rate cap, how there would be no opportunity to raise rates?

Senator PICCOLA. Mr. President, well, there is a rate cap in the bill, and I think the Consumer Advocate referred to the rate cap. So during the period of transition, there is no opportunity for the generators of electricity to raise their rates. The transmission aspect, of course, would still be part of the PUC jurisdiction, but there is no indication that would be raised either.

Senator MELLOW. Mr. President, so the gentleman would have to admit then that the statement that there is no opportunity to raise the rates is, in fact, not totally accurate, because for the distribution and the transmission of the electric utility there is a possibility that rates may be raised during that period of time?

Senator PICCOLA. Mr. President, that remains a possibility because, as I indicated, the distribution will remain a regulated monopoly, and I think we have to live with that because you certainly cannot have six or seven or multiple lines coming down the street to service the various customers of the Com-

monwealth. You must have a regulated monopoly for the distribution and the transmission aspect of the industry.

Senator MELLOW. Mr. President, well, would the gentleman at least then admit to us that the statement that there is no opportunity to raise the rates is not, in fact, a totally accurate statement?

Senator PICCOLA. Mr. President, there is no opportunity to raise the rates as it applies to the electric generation.

Senator MELLOW. Mr. President, the gentleman was very clear in the way he stated that there was no opportunity, and I think he said for a 4-year period of time, to raise rates. That in fact is not a totally accurate statement. That is taking one part of this proposal out of context and saying if you take one part that you cannot raise rates, but if there is an increase in transmission or distribution through the monopoly part of it, you in fact can have an increase in rates. Is that not what the gentleman is saying?

Senator PICCOLA. Mr. President, this legislation does not deal with the monopolistic portion of the electric utility industry. It sets free the electric generation portion, and so to mandate a rollback based upon a portion of industry that is not even going to be part of the legislation I do not think would be a relevant proposal.

Senator MELLOW. Mr. President, I think a little bit to the contrary. I think it does deal with the part that would be considered to be a monopoly because of the transmission and distribution facility where a utility can petition for a rate increase to the Public Utility Commission.

The PRESIDENT. Senator Mellow, is this a question or a remark?

Senator MELLOW. Mr. President, no, I thought that is what we were doing. I thought we were involved here in a very friendly debate.

The PRESIDENT. Well.

Senator MELLOW. This will be my final question, Mr. President. I realize that the night is getting late, but it is going to get a lot later before we finish here this evening, Mr. President. At least I believe so.

The PRESIDENT. I am interested in the temperature, too.

Senator MELLOW. Mr. President, I thank the gentleman for his answers.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Mr. President, first off and out of the chute, I can, I think, speak for any Member on this side of the aisle that as a legislator, if life were so simple that one could walk into this beautiful Chamber and cast an "aye" vote on an amendment to a bill and guarantee rate reductions of 10 percent across this State, I think people would be happy to cast that vote, but life is not so simple.

First off, Mr. President, as someone who has served here for 14 years, what I have seen is that many people have run for office, indeed even governor, and have run on a campaign of reducing electric utility rates. And I remember hearing that about 10 years ago, it was in a primary election, and I remember one of the candidates talking about he was going to, as governor, reduce electric utility rates.

POINT OF ORDER

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow. For what purpose does the gentleman rise?

Senator MELLOW. Mr. President, a point of order.

The PRESIDENT. State your point.

Senator MELLOW. Mr. President, debating the way a gubernatorial campaign took place 10 years ago is totally irrelevant to the amendment we are discussing today that would deal with a 10-percent reduction in electric utility rates.

The PRESIDENT. Senator Brightbill, I think you are soon to make a point.

Senator BRIGHTBILL. Mr. President, yes, sir. The point is that those rate decreases did not come. It had nothing to do with whether or not that individual was elected and it had nothing to do with the will of this body, of this General Assembly, to reduce electric rates. I daresay, and I obviously cannot speak for Governor Casey, but had he had a mechanism to create a reduction, he would have done it.

The interesting aspect of the bill that is before us today is that if someone could have come up with this set of words which were arrived at after much labor on the part of many, many good people, and much effort on the part of many, many good people, and introduced this as a bill 3 or 4 years ago, nothing would have happened. Because what we see here, Mr. President, is not simply the introduction of a bill or the passage of a bill and making something happen; what we see here is the State of Pennsylvania's reaction to a nationwide evolution in the delivery of electric utilities. Mr. President, I object--

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, the comments that are being made by the gentleman, which I assume are good comments, should be reserved for the final passage of the bill. We are right now dealing with a reduction, a mandatory reduction of 10 percent through the amendment process, and as meritorious as his arguments may be, they should be dealt with in final passage of the bill and not with this amendment, Mr. President.

The PRESIDENT. The gentleman has stated his point.

Senator Brightbill, the matter at hand warrants your more focused remarks.

Senator BRIGHTBILL. Mr. President, I am going to say that these remarks are focused and in context and we have given the other side many, many liberties.

The PRESIDENT. Senator Brightbill, the amendment is before us. I will ask you to speak to the question.

Senator BRIGHTBILL. Mr. President, I am doing that.

Now, what we have before us is an amendment, and for anyone who is listening at home, the amendment is titled A7963, and the amendment which is sponsored by the gentleman from Philadelphia, Senator Fumo, consists of two pages. The guts, or essence, of this amendment, Mr. President, are found on page 2 between lines 7 and 46. Now, what is interesting is that it really begins on line 7 and the first paragraph ends on line 14. The rest of the page, Mr. President, is dedicated to verbiage that Senator Fumo obviously felt was important

which states: "Rate reductions required by this chapter may be avoided, delayed or suspended in accordance with the following:". And then there is (i), (ii), and (iii), and within (i) there is a reference to (ii), and within (iii) there is a reference to (ii), and it is all very complicated, Mr. President, and it is what lawyers call an exception or a loophole. So here we are, we are standing and listening to people talking about an amendment that is going to reduce residential and small commercial ratepayers no less than 10 percent for 1998 and continuing through the year 2002, but most of the amendment is dedicated to an exception that the gentleman felt compelled to offer.

Mr. President, the point that I raised at the beginning is a little bit of history and the fact that one could not have offered this bill 2, 3, or 4 years ago, and the fact that we are seeing a transition in this industry is simply recognition that this is very, very complicated business. And I believe that people at home who are listening know that life is no longer so simple, that their General Assembly can reduce electric rates by 10 percent by waving a magic pen. We wish we could.

Mr. President, there are many reasons to do this. Senator Fumo talked at length about the makeup of the electric utility industry. What he did not emphasize was that these utilities are investor-owned. And that means that unlike the fat cats that Senator Fumo seems to make reference to many, many times on this floor, there are a lot of moms and pops and grandmas and grandpas and pension funds that rely upon these investments, because here is the deal that America makes with investor-owned electric companies. We say, look, you invest your capital, you invest your money, and you build plants and you build equipment, and in exchange for that, we will guarantee you a reasonable return on your investment, but no more. Now, you can invest in something else. Many of my colleagues are quite knowledgeable in terms of that, and you can enjoy very substantial returns on your investment, but if you do, you can lose your money. But if you invest with a utility, we say to these investors, we guarantee you a modest rate of return and no loss. And many common people, either directly or through their pension funds or through their IRAs or through their mutual funds, have made such investments. Now, what happens if this government passes a law that breaches that covenant? Well, in lawyerese it becomes an unconstitutional taking, Mr. President, and we are going to find ourselves in court fast on the end of a lawsuit, and we are not going to see electric utility rates coming down, we are going to see litigation going up.

Now, we live in a regulatory environment. Mr. President, I have been here for 14 years. I have wanted to see electric rates drop as everyone else here has for 14 years. And, Mr. President, this is our chance. This is our night to do that. If we miss tonight, if we miss our opportunity, we may lose it. Now, one of the aspects of this concept, this privatization, is this. One of the reasons that we hope to see the kinds of benefits that people are predicting, and, yes, they are using the number 10 percent, maybe higher, one of the reasons is that Pennsylvania can enjoy those savings if it gets in early, and that is the reason for the urgency. On the other hand, Mr. President, should we get there late, should 30 or 40 States have already accomplished

this, should all the securitization kind of bonding have occurred, should we be at the tail end of things, then, Mr. President, what we are going to see is unsubstantial savings.

You know, Mr. President, all of us in this Chamber have worked here a long time and we have all seen that one of the best ways to kill a bill is to insert a poison pill. The thinking is that if you put in a provision that people cannot vote against, such as a mandatory 10-percent reduction, people will not vote against it, but the bill will not work and it will not become law. I am sad to see that, Mr. President, because there are some people out there who are very much looking forward to the passage of this bill, not just the Consumer Advocate, not just the Small Business Advocate, not just the people who represent the industrials.

I have a letter here, a personal letter, and it is from a gentleman in the area that I think Senator Fumo, the sponsor of this amendment, represents. The letter says, "Dear Senator Brightbill: I am writing to urge you to support the consensus"--

POINT OF ORDER

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow. The gentleman will state his point.

Senator MELLOW. Mr. President, a point of order. You are allowing this debate to go entirely too far. This is not discussion on final passage of the bill, this is on an amendment. I am sure that the gentleman from Lebanon, Senator Brightbill, got a letter from a constituent or from a user of a utility or from a lot of people, but do we have to talk about it on the floor of the Senate when we are talking about an amendment dealing with a 10-percent mandatory reduction in electric rates? I mean, how much do you want to confuse the issue here?

Senator BRIGHTBILL. Mr. President, if I could respond.

The PRESIDENT. Senator Brightbill, carry on.

Senator MELLOW. Mr. President, in other words, he is just going to be allowed to continue to do that? Is that it?

The PRESIDENT. In the opinion of the Chair, the remarks are appropriate.

Senator MELLOW. The Chair should realize and see what the bill is that is being amended.

The PRESIDENT. Senator Mellow, thank you for your remarks. The amendment is in front of the Chair.

Senator MELLOW. You are welcome. Thank you, Mr. President.

Senator BRIGHTBILL. Mr. President, this letter is relevant because it starts out by saying: "I am writing to urge you to support the consensus electric competition legislation that will be considered in the General Assembly." And the letter goes on to say that, I support electric competition for one major reason. It is critically important to the effort to attract business and jobs to Pennsylvania. It says electric competition--

POINT OF ORDER

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, a point of order.

The PRESIDENT. The gentleman will state his point.

Senator FUMO. Mr. President, normally I would not have done this, however, the gentleman did it to me, and I think I have an obligation to keep the rules fair. Does that letter talk about my amendment and does that letter address a 10-percent reduction that the person does not want? That is all I am asking, Mr. President.

The PRESIDENT. Senator Fumo, the Chair will ask you to terminate.

Senator Brightbill, finish up.

Senator FUMO. Mr. President, will you rule on my point of order or not? I recognize how partisan you are, but please try to exercise some fairness.

The PRESIDENT. Senator Brightbill, complete your remarks.

Senator FUMO. Mr. President, please try to exercise some fairness.

Senator BRIGHTBILL. Mr. President, just to remind the gentleman, if he will listen to the letter, he will understand how--

The PRESIDENT. Senator Brightbill, the Chair at this point will ask you to complete your remarks.

Senator BRIGHTBILL. Mr. President, I am doing that.

The PRESIDENT. For anyone who wishes to make a point of order and raise a question, they merely can state that. That was an unjustifiable interruption, in the opinion of the Chair, so, Senator Brightbill, you will finish.

Senator BRIGHTBILL. Mr. President, the letter goes on to say that electric competition helps achieve that goal because it will reduce the costs of electricity for all consumers, utility ratepayers and businesses. And as I noted at the outset, this is a letter urging me to support the consensus electric competition legislation. This letter is signed by Mayor Edward G. Rendell of the city of Philadelphia, and I would not be surprised if Senator Fumo received such a letter.

Mr. President, I did not hear any debate concerning the State of California, but I am expecting it, and I would like to respond to it.

The PRESIDENT. Senator Brightbill, the amendment is at hand. The question is on the floor. I would ask you to confine your remarks only to the amendment.

Senator BRIGHTBILL. I am, Mr. President. Thank you very much. I appreciate your admonition.

Mr. President, the State of California actually enacted such a mandatory rollback, and it of course was something that the people who negotiated this bill looked at during the course of the meetings, and an across-the-board rollback is indeed something that is attractive. But in this State, we do not have three similar utilities such as they have in California. The California law strikes a different balance than the Pennsylvania legislation, and it is deceptive to compare one provision in isolation from all others, and the key difference is that in California they guaranteed the utilities a 100-percent return on their stranded investment. Here we make no such guarantee. In addition, I am told by reliable sources that the rates are much higher.

Mr. President, I would ask for a negative vote. Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, there are a number of issues that I want to address that have been raised by other Members in the intervening debate, but I think the first and most glaring is the one that the gentleman from Lebanon, Senator Brightbill, raised about the so-called loophole that I put in. Mr. President, I am the one here fighting for consumers, he is the one fighting for utilities.

Senator BRIGHTBILL. Mr. President, I would--

Senator FUMO. Mr. President, I want to read--

POINT OF ORDER

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. A point of order, Mr. President.

The PRESIDENT. The gentleman will state his point.

Senator BRIGHTBILL. Mr. President, my point is that that is a mischaracterization of my position. I feel that I, too, am fighting for consumers, and I think that mischaracterization should be stricken from the record.

The PRESIDENT. The record will reflect your remarks.

Senator Fumo, continue.

Senator FUMO. Mr. President, in the end, history will show who is fighting for consumers and who is not. Mr. President, let me tell you about the so-called loophole. I addressed it in my opening remarks. I did not want to be accused of coming in here and being irresponsible by having the audacity to demand that everyone who pays electric rates in Pennsylvania get a mandatory 10-percent rollback, because I recognized that there are some utility companies, and I named one, I believe, if the gentleman was paying attention, West Penn Power, that might not be able to afford to do that. So what I put in here in the form of a loophole was, and I will read it, that you can get relief from this 10-percent reduction if and only if there is a finding based on clear and convincing evidence, and for those people in the audience who are not here and those people who are watching this before the Steelers kick off in 3 minutes, those people who are still watching this who are not lawyers will understand there is a very high burden of proof. We have all heard about different burdens of proof with the O.J. trial. There is one for criminal, one for civil, and others. This happens to be a very high burden of proof. It has to be clear and convincing evidence to be determined that the relief--in this case suspension--is necessary to avoid requiring the electric utility to provide service at a substantial loss, not just loss, and which loss cannot be avoided by reasonable efforts of the utility. Mr. President, all consumers of America should be blessed with such a loophole written into legislation that affects big business.

I heard a lot said about the letter from the mayor. In fact, when I got it I was shocked. I called the mayor. I said, Eddie, what are you doing? Do you understand this bill? And the answer was, well, everybody called and said I should do this. The Governor called, Holman called, the utilities called, every-

body said it was a good idea, and they were worried that the bill might not pass. They told me it was harmless so I wrote a letter. I said, Ed, are you against any amendment that I might have that would put a mandatory 10-percent reduction into this bill? He said, absolutely not. In fact, try to make it 20 percent. So much for letters from constituents who do not understand what they are writing about, and that includes my mayor when he sticks his nose in places he should not. But when I told him what my amendment did, believe me, he is so supportive that if it would change your vote I would put him in a helicopter and get him up here in 20 minutes and have him tell you to your face. And, Mr. President, if the gentleman is willing to vote for my amendment if I strip out the so-called loophole, I will do that in a second. But he is not, Mr. President. He knows that so-called loophole is important.

Mr. President, let me tell you what we are talking about when we talk about the rates that people pay in Pennsylvania, and why they should be reduced by 10 percent. It is not a lot. Duquesne Power residential rate, 12.0 cents per kilowatt hour. Some people say well, gee, is that a lot? I do not know. Well, let me tell you how much it is. It is 150.19 percent greater than the national average. Met Ed, 8.25 percent, 106 percent of the national average. Penelec, 8.46 percent, 105.35 percent of the national average. Penn Power, 9.38 cents per kilowatt hour in residential, 116 percent of the national average. PP&L, 8.5 cents per kilowatt hour, 100.25 percent of the national average. And, Mr. President, I might add that I am giving these in alphabetical order and not rate order, because the next one I wondered why it was not at the top and it is because it begins with a "P" and not an "A." PECO, 12.48 cents per kilowatt hour, 155.42 percent of the national average. UGI, one of the ones that you should not want to roll back and should have this provision, UGI, 7.3 cents per kilowatt hour, 96.26 percent of the national average. West Penn Power that I referred to, 6.82 cents per kilowatt hour, 84.93 percent of the national average, another company that should be commended. The Pennsylvania average, Mr. President, is 9.19 cents per kilowatt hour; the national average is 8.03 percent. The Pennsylvania average is 114 percent over the national average. And all I said was take away 10 percent. They will still be above the national average.

Mr. President, I cannot understand why my colleagues in the Republican Caucus are afraid to give a 10-percent reduction to the consumers of Pennsylvania to consume electric energy. It is beyond me. Now, I have heard the argument, oh, we cannot do this, it might not be the right number. Mr. President, I heard that same argument when we debated here the bill concerning reduction of the automobile insurance rates. I heard the same story from Chicken Little that the sky was falling. But we stood together and reduced those rates 10 percent, and guess what? The sky did not fall. Mr. President, if we reduce these rates as I put forth in my amendment, the sky will not fall on the public utilities, but their greed might be tempered just a little bit.

Mr. President, this bill is allegedly being put forth by the Governor and by the Majority to reduce rates. That is what the premise was. At least that is what they said the premise was.

My mother, God rest her soul, taught me that actions speak louder than words, and nowhere on the face of the earth is that more applicable than here. This bill in committee was called by Senator Brightbill, I believe, the consumer competition act, or something of that nature. It always sounds good when you give it a good name. All I said was let us help consumers.

Yeah, this is technical stuff. This is unbelievable technical stuff. Lawyers spend their careers trying to understand this kind of technical stuff. But let me tell you what is not technical. The thing that is not technical is the thing that consumers understand, and that is if you vote for this amendment, we guarantee that your rates will go down 10 percent. We are not going to wait for the PUC to decide through some archaic process whether they will go down 6 percent, 10 percent, or, as I am sure the makers of these bills tell us, 20 and 30 percent, we are going to save everything. I will take the pig in a poke. I will take the bird in the hand worth two in the bush. I will take a 10-percent guarantee tonight, and if you give my consumers more, God bless you. But I do not think there is one person in Pennsylvania except for high-powered lobbyists and big utility executives that think that consumers are going to get a break.

Mr. President, I have also heard a little bit of confusion. You know, when you do not have the facts you just throw the stuff around and confuse the issue and then people get lost. I have heard one of the Senators get up and say that these generating companies are going to be in free enterprise. The gentleman from Dauphin, Senator Piccola, I think said that. No longer going to be regulated, it will be like Harry Truman's haberdashery shop. Well, let me tell you about that big thing out there that is gulping air and swallowing up our resources and generating electric. Let me tell you about how that is not the same as Harry Truman's haberdashery store, because people do not understand this. What you currently have are utilities that generate electricity and then transmit the electricity across the line. This bill allows the costs of all those generating plants, the ones that we talked about before that are over capacity, and allows people to bond them, which means we go out in the market and borrow money, and we say that \$8 billion we will pay back at a lesser amount in rate and it is only going to cost us a little bit of money. That is okay.

And I would not mind if those utilities came to us and said we want to bond our excess capacity. We want to bond our stranded costs and then we want to split off and go into the generating business and keep our transmission lines over here separate. I would vote for that in a second. But no, there is a little hitch in here that people kind of forget. And that is after they take all this debt, take all this cost called stranded costs, put a bond on it, guess what they do with the payments on the bond? They are then paid for by the transmission lines.

So, well now, let us take an example, PECO is charging 12.48 cents per kilowatt hour to residents. Of that 12.48 cents maybe 2 cents is for transmission and distribution. The other 10 cents is for this huge generating facility. Well, if PECO said I want to bond it and split it off and I will still charge 2 cents to transmit electricity across there and my consumers can go and buy it where they want and I will compete because I

am a tough competitor, I have no problem with that. But they want Joe Six-pack to pay for the billions of dollars for the plant. So now the same thing that used to cost them 2 cents, and that is putting that energy along that line, is now going to cost them 7 or 8 cents, maybe 9. And when they are done with that they will say, okay, now you can go out and buy your energy anywhere you want. We already got our 8 cents. We do not care what you do for the rest of your life. Mr. President, then what are they going to do? They are going to take those big generators that Joe Six-pack is now paying for because the costs to run the electric along his lines have gone up, and they are going to sell that in the free enterprise area. Mr. President, that is where they are going to sell that. They are going to make big bucks on that. I asked one of the lobbyists, you got a deal if the profits generated by those big generators now go back to the consumers. No. They want that for themselves. So getting back to Harry Truman's haberdashery shop--

The PRESIDENT. And the 10 percent.

Senator FUMO. --what he did was go and ask everyone in Independence, Missouri, give me 10 bucks so I can start my company, and if I make money it is mine, and if I do not, you lose. If we are using those analogies, we will use those analogies. But the bottom, simplistic line, Mr. President, is forget free enterprise, forget the American system of how we learn about risk and risk capital. The most important thing that consumers have to ask is why if those Republicans are telling me this is going to lower my rates, why will they not let me get a guaranteed 10-percent reduction like they did on automobile rates? Why do they not put their money where their mouth is? That is all we have been asking for here. Forget all the mumbo-jumbo - stranded costs, bond lawyers, underwriter's counsel, guys who run the books, the hundreds of millions of dollars that are going to be made in fat cat fees doing these bond deals. Forget about all that. Just give Pennsylvania's consumer, that same widow who might have a few shares of stock in PECO, just give her a 10-percent reduction in her rates. It is plain and simple. Why are you afraid to do that?

And I am not going to ask that question just tonight. I am going to ask that question in 2 years in your districts when you are running, and I am going to ask your constituents to ask that question. Why? Because by that time it will be utter chaos out there. People are not going to know what is going on, but they are going to see their rates go up.

The PRESIDENT. Senator Fumo.

Senator FUMO. Yes, Mr. President.

The PRESIDENT. Why do we not get back to that 10-percent rate rollback and go to the question.

Senator FUMO. Mr. President, I thought I was on that rollback.

The PRESIDENT. Well, in the last minute or so, I thought we went a little bit too far.

Senator FUMO. Mr. President, I want to say for the record and for those people who are watching TV tonight that they can see how fair you have been. While Senator Brightbill reads a letter from the mayor that has nothing to do with this amendment, you say that is okay. I talk about people being accountable to their constituents, you do not like that. I will tell you

what Harry Truman said as well, Mr. President: If you cannot take the heat in the kitchen, get out.

The PRESIDENT. I would like you to get back to Pennsylvania rather than Missouri. Let us finish up.

Senator FUMO. Well, I think we will stay in Pennsylvania, Mr. President, because this is where consumers get screwed by Republicans. It is a wonderful State if you are a Republican.

POINT OF ORDER

Senator BRIGHTBILL. Mr. President.

The PRESIDENT. Senator Fumo.

Senator FUMO. Oh, I knew that would upset you. If I am going to be admonished, Mr. President, I will say things that I should be admonished for.

The PRESIDENT. Senator Brightbill, state your point.

Senator BRIGHTBILL. Mr. President, my point is that the gentleman's comment certainly did not befit the Chamber of the Senate of Pennsylvania, nor did it reflect what is going on here tonight.

The PRESIDENT. The gentleman's point is well-taken.

Senator Fumo, are you ready to relinquish the floor?

Senator FUMO. No, Mr. President, I am not.

The PRESIDENT. Well, complete your remarks, sir.

Senator FUMO. Thank you, Mr. President. I know you will give me all the time that I am entitled to and that I need.

The PRESIDENT. As long as you are discussing the 10-percent rate rollback.

Senator FUMO. Mr. President, that is all I have been discussing.

I think it is against the dignity of this Chamber that we would not consider giving consumers a 10-percent rollback. If there is anything that is against the character of this Chamber, it is denying consumers a rollback in their utility rates when it is not a Utopia, when it is real. When you go back to your districts and you talk to senior citizens having a hard time paying their bills, you tell them why you did not want to reduce those rates 10 percent. When you go back and talk to working men and women with jobs, you tell them why you did not want to reduce that 10 percent. When you go back to the working poor that you knocked off health care, tell them why you will not give them a 10-percent reduction.

Mr. President, all the debate tonight that could go on for hours and hours and hours boils down to this: If you Republicans are really sincere that you are offering this bill to help consumers with competition, then put your money where your mouth is and give them just a little taste, just a little taste of those billions, just a little bit. Give them a 10-percent reduction. Put your money where your mouth is. Put your fears aside. I submit the only fears that you would have if you voted against this are PAC contributions from utilities. That is a real fear.

Thank you, Mr. President.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, Senator Punt, Senator Shaffer, and Senator Helfrick have been called from the floor to their offices, and I request temporary Capitol leaves on their behalf.

The PRESIDENT. Without objection, those leaves are granted.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, Senator O'Pake has also been called to his office, and I request a temporary Capitol leave for him.

The PRESIDENT. Without objection, that leave is granted.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEAS—21

Afflerbach	Hughes	Musto	Stewart
Andrezeski	Kasunic	O'Pake	Stout
Belan	Kitchen	Porterfield	Tartaglione
Bodack	LaValle	Schwartz	Wagner
Costa	Mellow	Stapleton	Williams
Fumo			

NAYS—29

Armstrong	Hart	Madigan	Salvatore
Bell	Heckler	Mowery	Shaffer
Brightbill	Helfrick	Peterson	Thompson
Corman	Holl	Piccola	Tilghman
Delp	Jubelirer	Punt	Tomlinson
Fisher	Lemmond	Rhoades	Uliana
Gerlach	Loeper	Robbins	Wenger
Greenleaf			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Belan has returned, and his temporary Capitol leave is cancelled.

And the question recurring,

Will the Senate agree to the bill on third consideration?

MELLOW AMENDMENT A8217

Senator MELLOW offered the following amendment No. A8217:

Amend Sec. 4 (Sec. 2804), page 31, line 15, by inserting after "(II)": for rates charged to industrial and commercial ratepayers

Amend Sec. 4 (Sec. 2804), page 33, line 19, by inserting after "LEVEL": for industrial and commercial ratepayers

Amend Sec. 4 (Sec. 2804), page 33, line 23, by inserting after "OF": industrial or commercial

Amend Sec. 4 (Sec. 2804), page 33, line 26, by inserting after "RATES.": The provisions of this subparagraph shall not apply to residential ratepayers.

Amend Sec. 4 (Sec. 2804), page 33, by inserting between lines 26 and 27:

(vi) An electric distribution utility may seek, and the commission may approve, an exception to the rate cap prohibitions for residential ratepayers under subparagraphs (iii) and (v) only upon a finding based upon clear and convincing evidence, as determined by the commission, that the rate cap exception is necessary to avoid requiring the electric distribution utility to provide services at a substantial loss, which loss cannot be avoided by reasonable efforts of the utility.

Amend Sec. 4 (Sec. 2804), page 33, line 27, by striking out "(VI)" and inserting: (vii)

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

This relates to the exception to the rate cap? You will be addressing the exception to the rate cap?

Senator MELLOW. That is correct, Mr. President.

The PRESIDENT. Proceed.

Senator MELLOW. Mr. President, very simply put, what the amendment does that I just offered, it provides for an absolute rate cap for the residential ratepayers under section 2804 except upon a finding by the commission that the exception is necessary to avoid requiring the utility to provide services at a substantial loss. What we are saying here, Mr. President, is basically this: that there is no rollback in the rates. We are not asking for a mandatory 10-percent reduction which was involved in the previous amendment that involved much debate. What we are purely saying, Mr. President, is this: that the way this particular proposal has been sold to the people of Pennsylvania, that a residential user especially will be entitled to some form of a stable rate and probably a rate reduction.

Just last week, Mr. President, in the meeting of the Committee on Rules and Executive Nominations when we were discussing this bill, it was pointed out that there is a rate cap in the bill, and now I am going to read from page 4 of the material that was submitted to all Members of the Senate by the gentleman from Lebanon, Senator Brightbill, and it says on page 4 that, "The legislation contains a cap on charges by utilities for a period of up to nine years; this cap is designed to assure that customers are not required to pay more than their current level of charges as a result of the move to competition." Period.

What our amendment here, Mr. President, is saying, by and large, is that we would like to guarantee that with basically one exception, and that exception being, and asked to be determined by the commission, that an electric distribution utility may seek and the commission may approve an exception to the rate cap prohibition for residential ratepayers under subparagraph, and only upon a finding based upon clear and convincing evidence as determined by the commission.

Now, Mr. President, I believe a lot of the things that were said on this floor today are accurate. I think the Members of this body in fact want to guarantee competition and want to guarantee competition in a fair way by saying that as long as we are going to have an unregulated industry that is going to bring about competition, that especially the residential user of electricity will not be severely impacted upon unless something

that is very extreme takes place. There is nothing in this bill, Mr. President, as it stands before us, House Bill No. 1509, that would guarantee not only a reduction but would guarantee that the rates must be capped. What my amendment says is that these rates must be capped unless there are some extraordinary things that have taken place where there is clear and convincing evidence as determined by the Public Utility Commission. If in fact that does not take place, then the individuals for at least a 9-year period of time will have their rate capped at the current level.

Now, Mr. President, when you go through the bill, basically starting on page 33 and going through several pages, you will find that the amendment, actually starting on page 31 and going to page 33, you will find there are a number of ways in which, for the purpose of transmission and distribution, that the utility can petition the Public Utility Commission, and the residential user in fact instead of having rates capped at what they were paying may in fact find themselves paying a more substantial amount of money. And the part that concerns me more than anything else in that stranded cost is that it is very, very possible, as we talked about on page 27, line 25, that "retirement costs attributable to the utility's existing generating plants other than the costs defined in paragraph (1)," that those costs to give an early buy-out or an early retirement or an employee severance, those costs can be passed on to the paying consumer through the stranded costs.

Now, it has been sold on the floor that the only costs that can be incurred that might bring about an increase in utility rates would be for distribution or transmission. However, the definition of stranded costs also includes a buy-out for retirement and employee severance, retraining and early retirement, outplacement and related expenses, et cetera, which really means this when you cut it right down: that a CEO who is getting paid a lot of money to operate a utility, and hopefully is doing a decent job, if they have an early retirement through this particular proposal and that early retirement is part of the stranded costs, then the cost of that retirement for that CEO, who is making a lot of money, through the rate base will be passed on to the consumer. The amendment I have offered will guarantee that unless the Public Utility Commission determines that to be clear and convincing evidence, they cannot ask for a rate increase through the Public Utility Commission, Mr. President, and I ask for an affirmative vote.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, Senator Corman and Senator Holl have been called from the floor, and I request temporary Capitol leaves on their behalf.

The PRESIDENT. Without objection, those temporary Capitol leaves will be granted.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator MELLOW and were as follows, viz:

YEAS—21

Afflerbach	Hughes	Musto	Stewart
Andrezeski	Kasunic	O'Pake	Stout
Belan	Kitchen	Porterfield	Tartaglione
Bodack	LaValle	Schwartz	Wagner
Costa	Mellow	Stapleton	Williams
Fumo			

NAYS—29

Armstrong	Hart	Madigan	Salvatore
Bell	Heckler	Mowery	Shaffer
Brightbill	Helfrick	Peterson	Thompson
Corman	Holl	Piccola	Tilghman
Delp	Jubelirer	Punt	Tomlinson
Fisher	Lemmond	Rhoades	Uliana
Gerlach	Loeper	Robbins	Wenger
Greenleaf			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,
Will the Senate agree to the bill on third consideration?

SCHWARTZ AMENDMENT A7957

Senator SCHWARTZ offered the following amendment No. A7957:

Amend Sec. 4 (Sec. 2804), page 37, by inserting between lines 10 and 11:

(17) The commission shall promulgate regulations which require an electric generation supplier that desires to do business in this Commonwealth to utilize renewable resources for no less than 5% of its energy portfolio by January 1, 2007.

On the question,
Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, this is a very simple amendment and I am sorry not to see it in the legislation as it was proposed, and what it does very simply is there was a definition in the bill of renewable resources on page 26, which is an acceptable definition and implies by its inclusion in the legislation that we have interest in renewable resources, that we want to encourage our generators of electricity to continue to do what is not the easiest way to go necessarily in terms of generating electricity, but in fact to include technologies of reusable resources, including solar energy and wind power and low-head hydropower and all the variety of other kinds of resources that could be very useful both to protecting the environment by reusing some of our resources and generating electricity for sale to all of those consumers out there.

So what my amendment does very simply is to encourage requiring generators of electricity to move in the direction they have been moving slowly in by asking the PUC to promulgate regulations which would require electric generation suppliers that desire to do business in the Commonwealth to utilize re-

newable resources for no less than 5 percent of their energy portfolio by January 1, 2007. That gives them 10 years to do so, and I would hope, Mr. President, this encourages their move in that direction by requiring a very small percentage but potentially a very significant percentage of moving in that direction of assuring that we are encouraging new suppliers of electricity in their generation to use renewable resources, and in that way do our bit to protect the environment.

Thank you very much, Mr. President.

The PRESIDENT. On the amendment, the Chair recognizes the gentleman from Northampton, Senator Uliana.

Senator ULIANA. Mr. President, would the maker of the amendment consent to brief interrogation?

The PRESIDENT. Senator Schwartz.

Senator SCHWARTZ. Yes, Mr. President.

The PRESIDENT. This is on renewable resources?

Senator ULIANA. Yes, Mr. President, I agree.

Question. I am interested in this and I read that definition and I see your amendment. Could the gentlewoman please tell us some of the companies who are involved, or some of the organizations or entities who are involved, in these renewable resource projects, because I think it is interesting technology and I would like to be educated here a little bit.

Senator SCHWARTZ. Mr. President, well, I am sorry not to be able to offer those kinds of specifics, but I do know that some companies both in Pennsylvania and certainly others around the country have been working on this and we are seeing some headway on this, and as I understand it there has been some review by some of the experts from outside the State who have come into the State and have said that we have the ability to do much more than we now do and want to encourage some of the companies that are here now to do even more of it and think that in fact it is quite feasible. You may recall that while they are not considered purely renewable resources that years ago the whole notion of cogenerational plants, for example, did not exist in the Commonwealth and now it does so quite successfully, so I think it is exciting new technology that is happening and is potentially available. I do not--

Senator ULIANA. But, Mr. President, if I could, under your definition of renewable resources, culm-fired nonutility generators and other types of nonutility generators which take waste products such as commercial waste and burn it and then transfer it into energy would not be covered under your amendment.

Senator SCHWARTZ. Mr. President, that is correct.

Senator ULIANA. Mr. President, does the gentlewoman know if there are any organizations out there right now that are doing solar, geothermal, low-grade hydro that she sees right in the future that could be on line in 10 years?

Senator SCHWARTZ. No, Mr. President, I think there are. I just cannot give the gentleman the names and addresses right now. I would be happy to supply that information. My understanding is that they do exist, and one of the points that has been made to me is that in fact one of the advantages of the ability for consumers to be able to purchase their electricity from anywhere is that if you are the kind of consumer that wants to be more conscientious about this--

Senator ULIANA. A green consumer, Mr. President.

Senator SCHWARTZ. --you could actually go and look for a company that may be in another State that does produce electricity with renewable resources and buy all of your electricity from them, so it creates that opportunity and that is one of the good aspects of this legislation.

Senator ULIANA. Mr. President, in this legislation one of the keys is that we are going to unbundle the rates, that in your rate you will no longer have just one charge per kilowatt hour, that you will have your fuel costs, your taxes. By this time we will be done with our ITCs and CTCs. How does the gentlewoman expect this 5-percent mandatory purchase agreement to be encapsulated within that unbundled rate so that we can ensure that the standard of 5 percent is being met?

Senator SCHWARTZ. Mr. President, let me answer it in this way. The way the amendment reads, and again it says that the electric generation supplier itself, not the company that is buying the electricity but the company that is making the electricity, is the one that is responsible for diversifying the way in which it produces electricity, so that every supplier would have to do that.

Senator ULIANA. So in that generation cost, Mr. President, the gentlewoman expects that there will be incorporated within that the 5 percent of generation capacity which is dedicated to renewables?

Senator SCHWARTZ. Mr. President, I am assuming those costs would be passed on. Absolutely.

Senator ULIANA. Mr. President, does the gentlewoman expect that these costs will be greater than the cost of what normal, commonplace generation capacity power will be at that time?

Senator SCHWARTZ. Mr. President, my understanding is that in fact the costs can sometimes initially be, as in all new technologies where there are some costs to capital investments, so that while there may be some initial costs, if it is a change in something new, in fact it is something that if you do it correctly it can in fact produce cost savings. But it does recognize that there are potentially costs for starting up and encouragement--

Senator ULIANA. So this is going to be--

Senator SCHWARTZ. --which is one of the reasons we suggest that we require it.

Senator ULIANA. Mr. President, so this will be a cost increase to Pennsylvania consumers if the technology has not been sufficiently perfected so that we have been able to deal with the start-up costs?

Senator SCHWARTZ. Mr. President, I am not sure that is the reason it is more costly. I think the reason it is more costly is if you are not using any of those technologies, then you have to purchase them, and there are some costs to purchase them. So even if they are relatively inexpensive or brand new you may be able to buy them without creating them. But there will be a cost to buying them if you now do not do anything, so you are correct that there would be some costs as there would be to buying any new equipment.

Senator ULIANA. Mr. President, I thank the gentlewoman. I appreciate her consent.

Mr. President, if I could on the amendment, I urge strong opposition to this. This is one of the amendments that sounds very good. It sounds much like something that we should be working toward, but when you break it down and you go underneath the surface, you find some very troubling aspects. Chairman Bell of the Committee on Consumer Protection and Professional Licensure held a series of five hearings on this issue. At one of those hearings, Browning Ferris, Incorporated, a large multinational, multibillion dollar company, came before us asking for such and similar breaks. Why do they want it? They want to have these breaks because they want to mandate on Pennsylvania ratepayers the repurchase of electricity produced from methane gas, because after they cap off their landfills, which they have a lot of right now, they have a methane product which is produced from that landfill. They want to make sure, Mr. President, that not only can they get the best possible return on that landfill from filling it up, but they want us, the ratepayers in Pennsylvania, to pay for the additional methane discharge which they now have to take care of as part of their permit with the DEP. I do not know why we should be allowing and giving a legal break, a subsidy, to Browning Ferris, Incorporated, to Waste Management, Incorporated, to take their methane generation and turn it into electricity so that we have to purchase it.

Let us be realistic. This is not an issue about windmills on a plain in Pennsylvania or about damming up the Susquehanna River outside here in Harrisburg. This is an issue about large multinational corporations that want to get a 5-percent guaranteed slice of the Pennsylvania electric generation pie. And maybe I have listened a little bit too much to my friend from Philadelphia, the Minority Appropriations chairman, but it seems to be exactly the thing that we should not be doing. It seems that we are building in a little corporate subsidy here for these very rich and very aggressive companies.

Now, I think we should be doing all we can to promote renewables and there are a lot of other renewables we should be looking at. But when I see my friend Jim Rhoades from Schuylkill County, where they have piles and piles of culm that they have to get rid of and they have nonutility generators, why do we not include those culm-fired generators? They are taking away a product which is just lying around and utilizing it again for the production of electricity. And when we get to that, why do we not allow for commercial incineration that is taking away our paper products? Why do not we allow that to get a break? Well, then why do we not allow commercial hazardous waste incineration to get a break? We can go on and on and on and on.

I think what we need to understand is that the competitive marketplace into the future should not be governed by legal loopholes in surpluses built in by this General Assembly for very wealthy corporations. What we should be doing is allow everybody to compete on an even playing field, and I think the gentlewoman is probably correct. There will be technologies that are not in the mainstream of technologies now that will be cheaper and will be used and consumers will purchase those because of the price. The last thing we should be doing in this legislation is guaranteeing market share, because I can tell you

what is going to happen. Not only will the rich and powerful waste management companies take advantage of it, but what will happen is we will have inefficient utilization of resources because there will be no incentive for those companies to do more. So anybody who has a large field of solar panels or the windmills out on the plain, as long as they are getting their 5 percent, what is the benefit to them to get involved in competition? And in the long run who loses? Our consumers and the ratepayers of Pennsylvania.

It seems to me, Mr. President, it is pretty simple. I would appreciate a "no" vote on this amendment. I think that we have talked long about these amendments, and I would appreciate it if the Senate would do so.

Thank you, Mr. President.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator SCHWARTZ and were as follows, viz:

YEAS—21

Afflerbach	Hughes	Musto	Stewart
Andrezski	Kasunic	O'Pake	Stout
Belan	Kitchen	Porterfield	Tartaglione
Bodack	LaValle	Schwartz	Wagner
Costa	Mellow	Stapleton	Williams
Fumo			

NAYS—29

Armstrong	Hart	Madigan	Salvatore
Bell	Heckler	Mowery	Shaffer
Brightbill	Helfrick	Peterson	Thompson
Corman	Holl	Piccola	Tilghman
Delp	Jubelirer	Punt	Tomlinson
Fisher	Lemmond	Rhoades	Uliana
Gerlach	Loeper	Robbins	Wenger
Greenleaf			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,
Will the Senate agree to the bill on third consideration?

WILLIAMS AMENDMENT A8233

Senator WILLIAMS offered the following amendment No. A8233:

Amend Bill, page 17, by inserting between lines 6 and 7:

Section 2.1. Section 319(a) of Title 66 is amended by adding a paragraph to read:

§ 319. Code of ethics.

(a) General rule.—Each commissioner and each administrative law judge shall conform to the following code of ethics for the Public Utility Commission. A commissioner and an administrative law judge must:

* * *

(13) Prevent, prohibit and eliminate racial, ethnic and religious discrimination in the workplace at all levels of employment; emphasize and publicize throughout the Commonwealth the steps to be taken to set the example and proper tone for all employees to eliminate discrimination in the workplace; and to seek out, uncover and correct any discrimination that is found in the workplace.

* * *

Section 2.2. Section 321 of Title 66 is amended to read:
§ 321. Annual reports.

(a) Content.—The commission shall annually transmit, to the Governor and the General Assembly and shall make available to the public, a report on the conduct of the commission. The report shall include, but shall not be limited to, a summary of all rate proceedings completed within the reporting period, the amount of the rate increase requested in each such proceeding, the amount of the request granted by the commission in each such proceeding, the percentage increase in rates requested and granted in each such proceeding as compared to the percentage increase requested and granted in the most recent similar proceeding for the affected utility prior to the reporting period, a summary of other significant regulatory issues which the commission resolved during the reporting period, a summary of significant orders and decisions of the commission and the courts of the Commonwealth during the reporting period relating to public utilities, a summary of significant anticipated issues by type of utility and a status report of any commission action regarding these issues, and a summary of the audits completed by the commission during the reporting period. In the annual report and at such other times as the commission determines, the commission shall make recommendations to the Governor and the General Assembly which the commission believes to be necessary or desirable to protect the public interest.

(b) Compliance with certain requirements.—The annual report shall include details of the steps taken by the commission to comply with the requirements of section 319(a)(13) (relating to code of ethics).

Amend Sec. 4 (Sec. 2804), page 36, by inserting between lines 7 and 8:

(16) At the time each utility files its restructuring plan with the commission, the utility shall submit a plan to prevent, prohibit and eliminate racial, ethnic and religious discrimination in the workplace at all levels of employment; emphasize and publicize throughout this Commonwealth the steps to be taken to set the example and proper tone for all employees to eliminate discrimination in the workplace; and to seek out uncover and correct any discrimination that is found in the workplace.

Amend Sec. 4 (Sec. 2804), page 36, line 8, by striking out "(16)" and inserting: (17)

Amend Sec. 4 (Sec. 2806), page 42, line 11, by inserting after "MECHANISM;": a proposed plan to prevent, prohibit and eliminate racial, ethnic and religious discrimination in the workplace at all levels of employment; emphasize and publicize throughout this Commonwealth the steps to be taken to set the example and proper tone for all employees to eliminate discrimination in the workplace; and to seek out uncover and correct any discrimination that is found in the workplace;

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Williams.

Senator WILLIAMS. Mr. President, a couple of weeks ago the nation was exposed to probably the most unfair and the most blatant and repugnant acts by people in the highest corridors of corporate America. I speak of the Texaco activities whereby it was apparently clear that African-Americans, and perhaps Jewish-Americans, who were employed by that company were unwelcome and disregarded as far as employment, promotion, condition of employment, and indeed the basic simple respect as people.

And I am very sorry that we are, at a late hour, and what was one of the most searing issues of what is admittedly our biggest problem in this country for so long was profiled and

addressed so clearly, and it is too bad that on this, a most radical change in the benefits of a free market, the benefits of the services of utilities and the reasonableness of rates therewith, yes, advances — even the mayor of Philadelphia wrote a letter about the climate that would create a hallmark of activity that we are doing here. And the bare bones of the people here to watch it, let alone to hear what we come to debate and listen and hear and examine, quote, unquote, "reason" like American legislators who seem to have the answers for the fundamental needs of people, who claim to adhere to the dictates of our laws, our Constitution, indeed we are convicted in fairness; so we say every day. I told a friend of mine recently, there are such people I know who are of the Christian faith and I call them SAID-Christians. That is, because I SAID I am so, so I am a Christian, so to speak. Well, you can find that anywhere.

But we are confronted tonight, here, few in numbers, with a cross-section of the claim to be an enterprising, viable, smart, sharing, fair-to-everybody government. And we are faced still yet, according to Peter Bijur, the chairman of Texaco, that is rampant throughout corporate America in business, guilty of top-to-bottom discrimination based on race and religion. He is the chairman and he said it is the tip of the iceberg. Well, Mr. President, I say wake up, Pennsylvania; wake up, America, because we cannot continue to talk out of both sides of our mouths while thinking out of four sides of our brain and expect to create a stable, viable, fair, strong, and enterprising generation to follow us. You cannot do it. We step knee-deep in lies.

And so, Mr. President, this amendment is very simple. It is clear and convincing. It says that the PUC itself shall "prevent, prohibit and eliminate racial, ethnic and religious discrimination in the workplace at all levels of employment," and publicize throughout the Commonwealth the steps that they are taking to eliminate discrimination and "to seek out, uncover and correct any discrimination that is found in the workplace." And that it further will publish the details each year of what steps accordingly have been taken. That says that the PUC in this State will have to have a settlement, it has been warned, and let me say at this juncture, Mr. President, that the PUC here has a record that is not enviable, where a supervisor can call his coworker a black bitch. Yes, that is documented. Where the chief counsel can cause to oust a black male because he is a black male and distribute material commensurate to same, the chief counsel. If the lawyers cannot protect, who is going to?

So we here are not in an enviable position. But there is more. Every one of us here tonight would not expect, not co-opt with, not like, find repugnant, basic and simple unfairness. And yes, we talked about the corporations that have multi-billions of dollars. And we are saying that they, too, should start the same way we are asking the commission. And that is to take some simple steps to guarantee the same as they asked to get into this new machinery that we are implementing, that we are legislating, that we are saying is going to be fair to our ratepayers, fair to all parties consumed.

I ask, Mr. President, are not minorities, are not ethnics also part of our ratepayers? Are they not part of our citizens? Are

they not? The very subjects that we say we prohibit discrimination about, and that is anybody who works in our workplace. And it very simply also, Mr. President, says that they must submit plans in their other plans of restructuring that will prohibit and eliminate racial, ethnic, and religious discrimination in the workplace at all levels, and so forth and so on, and also publicize and emphasize those policies from top to bottom so as to serve as a model, and seek to uncover those kinds of actions that we have just spoken of.

Mr. President, the time is now. The debate is over. This is not affirmative action or what have you. The discrimination that we speak of is where people who should be promoted are on secret lists. Had it not been on tapes, we never would have discovered how open this is. Mr. Bijur says it is rampant. And so if we are candid, if we are honest, if we are anywhere close to what we say we are, then now is the time to recognize, confront, and to propose no complicated verses but a simple responsibility when we are going to transfer an opportunity to those who would make large amounts of profits for the future. Where we are saying the American way from a controlled activity to a free activity, and it has been shown that that freedom not only carries with it a responsibility but in many respects a cancer followed year after year, generation after generation, and imposed upon lots of people who we say are on welfare, some who say they cannot find a job, cannot get a job, cannot keep a job, cannot get promoted. What kind of America is that? What kind of a free enterprise system is that, when all the people connected are not free? And we are imprisoned by the yoke of a few people who systemically would create a policy that dismisses other people.

Texaco, I found a story. Some of you know Frank Washington. He was a Harlem Globetrotter. That means the man could play some basketball. That means he is an American. He also has been a businessman of long standing. Last year Frank stopped in Sicklerville at a Texaco with a \$100 bill, he had no change.

The PRESIDENT. Senator Williams, PUC and the process.

Senator WILLIAMS. The amendment, Mr. President, is about discrimination, and the amendment to correct the condition with the utility.

The PRESIDENT. Help us see the connection, Senator, and move on.

Senator WILLIAMS. Well, Texaco is the company. It was a Texaco station. The man told Frank Washington, a hero to our children, we do not want your kind around here. And that is not remediated yet. That is how deep it is to very special people. How would you like to see that happen to Elgin Baylor? What is the difference? I am saying these are real people in a system that we find reason not to go into this year. And I am not trying to debate it at this point because the evidence is clear, I am just trying to say it is about time to take one small step to correct it if we are honest.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Blair, Senator Jubelirer.

The PRESIDENT pro tempore. Mr. President, it is very difficult for me as one who shares the passion, the commit-

ment, the absolute disdain for racism, for the kind of thing that the Texaco Company exhibited to the world, to disagree with an amendment offered by my distinguished colleague, the gentleman from Philadelphia, Senator Williams.

Mr. President, I do not believe that this amendment belongs in this bill. I believe everything that he says. I share everything he says. I have been an outspoken opponent of the kind of action that Senator Williams refers to. I have been a victim of discrimination, and I have fought discrimination and bigotry all my life and have served in this body by sponsoring legislation against things such as cross burning that deals with this kind of situation. But, Mr. President, I guess I do not agree with the president of Texaco that it is rampant in corporate America, and I believe that there are people out there who care about America, who believe that racism is wrong, evil, and poisonous, who believe that prejudice is ugly, disdainful, and does not belong in society, but I do not believe that we as a General Assembly should be legislating people's conduct in this kind of legislation.

Mr. President, there is a Human Relations Commission that deals with conduct such as this, and it is there for such conduct that Senator Williams describes. We have cross-burning legislation, we have ethnic intimidation laws, we have discrimination laws, all of which are already on the books. To begin to legislate this in each and every type of legislation that deals with a particular agency I think does not do the job. Yes, it makes a statement, but I think that statement has already been made when this General Assembly put laws on the books.

Mr. President, as I said when I started, it is very difficult to disagree with someone whom I respect, admire and agree with on this issue so very much. But, Mr. President, I do not believe that we should put this kind of language in this bill. I do not believe that is a responsibility the PUC has. I think it is a responsibility of the Human Relations Commission. I do not believe that we should set up a new bureaucracy within the PUC to do this, because I believe that belongs in the Human Relations Commission.

Mr. President, if we had no laws, if we had not addressed this issue in any other way, perhaps we should be doing it on a case-by-case or legislation or bill-by-bill process, but we have done it and the legislation is there. And even though I agree with my colleague, Senator Williams, on many of the things that come from his heart, and I agree, I am sure, with every Member of this body who shares that, I truly do not believe that we ought to legislate it in this particular bill.

And for that reason, Mr. President, as much as I share the passion of Senator Williams, I would oppose the amendment and ask that we recognize that we have done this as a General Assembly. We will continue to speak out and when things such as the national disgrace of Texaco and those who participated in it calls it to our attention, it sends us back to thinking about what we are all about as Americans and as people who need to respect one another for whoever they are, regardless of race, color, or any kind of background.

Mr. President, I must rise to oppose this amendment and, again, I respect my colleagues who wish to put this amendment into this legislation.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Bodack has returned, and his temporary Capitol leave is cancelled.

And the question recurring,
Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Hughes.

Senator HUGHES. Mr. President, I rise in support of the amendment of the gentleman from Philadelphia, Senator Williams. Mr. President, I guess the reason why we have to go down this path is because we are confronted again in so dramatic a fashion with the significant level of intolerance, and more importantly, a stated act by one of the world's largest corporations of conscious policy within that corporate entity to specifically discriminate against classes of people, not made up, not thought about, not wondered, consciously worked out, determined, focused, plan of attack, the whole business, and then an even more criminal act of consciously destroying the evidence and denying.

We have had a lot of conversations about this issue for so many years, Mr. President. We have had a lot of people speaking out on this issue for so many years, but we have not had sufficient action, and we, frankly, Mr. President, have to use every available opportunity that comes down our path, that comes across our way, that is put on these senatorial Calendars. We have to use every opportunity available to us to stamp out that kind of behavior. And all my very distinguished colleague is asking for is for this PUC to take an affirmative step, and maybe I am using that wrong word because this is not affirmative action in its traditional sense, this is a proactive plan, to work on eliminating discrimination where it finds it within the numbers of corporate entities, these utilities over which it has oversight.

I love the work of the Pennsylvania Human Relations Commission, but I know that they have been unfunded and underfunded for too many years and they have a backlog of thousands of cases, and they need additional support to do the work that has to be done. I have worked with their leadership. I have heard people come to my office complaining about the problems that they have had with discriminations in the corporate and the utility community. I have had meetings with leadership at the PUC to deal specifically with issues of this nature, both as a broader policy discussion and also specific occurrences.

We need more teeth to get the job done, and this is our opportunity. This is our opportunity. And the fact is for those utilities that do not have a problem, it is a nonissue. They do not have to worry about it. But for those entities that do have a problem, then it is the responsibility of this body to make sure that there is an arm in place that has direct oversight, not indirect influence but direct oversight to work with that utility to stamp out those problems. That is all we are asking for.

That is all this amendment asks to do. We have to rise to a higher level, Mr. President. We cannot just talk about this problem and work on this problem. We have to take a proac-

tive measure to utilize that entity which has an opportunity to have real impact because some folks do not want to listen to the talk. Some folks do not want to listen to good reason. Some folks, however, will respond when the oversight entity says that you must address the issues of discrimination. That is all the gentleman is asking for. That is all this amendment requires. It is, I guess amazing is the most appropriate word, but again, on one side I am so used to it that my skin has become thick, that colleagues would choose to oppose a very simple amendment which if utilities do not have a problem, it will not impact upon them in any significant way and would really stamp out what it is that we say we are for.

You know, I guess it is all in how you look at things. I heard someone in here talk earlier about this beautiful Chamber that we are in, and on its face it is a very beautiful Chamber. But when you look deeper at some of the walls around here, Mr. President, you see that there is a lot lacking in the kind of beauty that is talked about in this Chamber when you look a little bit closer. And we have a responsibility, Mr. President, with this amendment, to dig deeper into what it is that we all say that we care about. Talk is cheap. It is now time for action, and we have an opportunity here to take a big and bold step to root out a problem that really has crippled this nation, even before its inception. I ask for support for this amendment, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, the gentleman from Blair spoke on the amendment, and I believe he is sincere in his attempts to prevent discrimination, to root out discrimination in the Commonwealth. I know that we have worked together to do that. In fact, the only point upon which we disagree were his words tonight that he does not think this particular amendment belongs in this bill. I take the converse view. I believe it does belong in this bill. I believe it belongs in this bill for this very important reason: We are restructuring the electric industry in the most significant fashion that we have done so in this century.

I daresay that any of the existing electric utilities in Pennsylvania would not be bothered or negatively affected by this legislation, because under the present highly regulated system, the Pennsylvania Public Utility Commission already has exercised its authority in the various rate filings by our public utilities and in the various complaint processes that can be brought against utilities to assure to the greatest extent possible that these utilities are not participating in discriminatory practices under any circumstance.

But tonight we are being asked to restructure a system that will essentially open up to the free market the power generation capabilities not only of our existing utilities in Pennsylvania but to any power generator outside of this Commonwealth. Senator Williams offers an amendment that merely assures that the same high standard that we have required of our own domestic Pennsylvania utilities be extended to whoever else wants to enter this Commonwealth as a power supplier. It merely assures that when the restructuring plan is put forth to the Pennsylvania Public Utility Commission, that the Public

Utility Commission can go ahead as it has done under the present code to assure that there are no discriminatory practices by those who would seek to be licensed to provide power to the citizens of this Commonwealth.

I think it is necessary in this bill simply because those people outside of Pennsylvania who would now come into this State are not governed by our present Title 66 of the Public Utilities Code, nor will they be regulated beyond the licensing requirement. I think it is therefore essential to make sure that when we consider that licensing that we extend the same standard of antidiscrimination requirements to all potential suppliers of power in this Commonwealth.

I would ask for a favorable vote on the gentleman's amendment.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Williams.

Senator WILLIAMS. Mr. President, I know someone is anxious to vote it. I am sorry. As I said before, now is the time.

I am most moved by the comments of the gentleman from Blair. I wonder what Colin Powell would do on this issue, and I wonder what he would say when someone says not this bill, not this time. And I could just hear him respond, if not here, where? If not now, when? If not us, who? I have a great deal of respect for the gentleman. I just want him to know that I have heard that year after year after year that you cannot legislate this, you cannot legislate that. We legislate everything all the time.

What we are doing now is unprecedented. This bill goes against the philosophy of what exists now. You cannot trust people with all this power and monopoly so you put it in certain hands. What we are doing now is unprecedented. It is about time that some of us have enough guts to say we will not allow a public utility or any place to call someone a black bitch, or any other ethnic pejorative. That is simply no class, it is underclass, it is not necessary, it has no place in it.

And I do not know whether we have a conditioned reflex or what, but African-Americans, Jewish-Americans, are all people. And I do not know what God you all pray to, but I know we use the Bible and make all these things. Now is the time. This is the business. People are asking for an opportunity to be heard. And we are going to sit here and allow people that we put in place not to give a simple signal, because that is all this bill does. This is not complicated. It says the tone will be set, the expectation will be met, and they will dig to root out what Mr. Bijur found out existed in his company and announced that goes throughout this country.

You know, it is really shame on us that in 1996, November, after all we have been through, that we cannot even keep quiet while another Member speaks on something as serious as a person working. We are talking about spending millions of dollars on welfare to have some businesspeople make some money out of poor people that we make just like this, by simply not guaranteeing the protection of equal protection, fairness, and opportunity. And I am sorry about that. I have to admit that. I am really sorry that to talk about this is so repugnant to the center of some of our Membership that they are

either not here or they cannot even listen. Now, I guess maybe as long as they listen I will keep on talking because maybe some quiet would happen. But I do say that I think of it as a matter of respect that when a legislator cannot listen to a debate which says that we have a responsibility as statespeople to recognize and say candidly and honestly how can we look in a mirror and keep eluding such a question at a time when it is across the screen, it is not hidden; at a time when a businessman says it is all over.

Those of us who say we want the facts, here they are. Those of us who argue that we want to do it case by case, you know, the statistics are here. Out of 100 percent of the people who make over \$100,000 in that company, 1 percent are black; of the 49 people who make the highest salaries, only 1 is black. Mr. Bijur, he knows statistics speak. He knows that secret lists, even more secret and sinister things are done. Now, if that does not move those of us who piously talk about free enterprise, open competition, that is not open competition, that is a fakery, not even to examine where it fits I must say is disappointing.

However, Mr. President, I say again, now is the time. We are the people. This is the issue.

Thank you.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Corman has returned, and his temporary Capitol leave is cancelled.

And the question recurring,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I know the hour is late. I am as tired as anybody else here. But quite frankly, I cannot believe that we are even debating this particular amendment. The other ones I kind of understood, there was money involved. Mr. President, I am told on this floor that this is not the bill to address this issue, this the not the bill to address a 10-percent reduction in rates for consumers, this is not the bill to make sure that there is a cap on utility rates. What is this bill?

Mr. President, it appears now that this is only a bill for fat cat utility people. I can understand the financial issues, but I cannot understand a vote against an amendment that says that there shall be no discrimination. And not just racial discrimination, there shall be no ethnic discrimination.

I urged Senator Jubelirer to face the discrimination he faced in his life. I have shared those same discriminatory feelings against me as an Italian-American. You know, we of Italian heritage get labeled as members of the Mafia. That is because we are Italian-Americans. Black people get labeled as criminals. I do not know what they label other ethnic people. I guess Jewish people get labeled as thieves because they take a lot of money out of the system. I do not know. I know what the labels I had to live with were. This bill addresses that for these fat cat utilities, and it even addresses religious discrimination.

And, Mr. President, there will be a signal sent out tonight if we vote down this amendment, something which strikes at the very core of our democracy. The Senate of Pennsylvania is sending out the message that it is okay to practice discrimination in the workplace, not just in utilities, but wherever you want. And it is okay to practice discrimination that is racial, ethnic, and religious. If that is the message that Republicans want to send out tonight, then I guess we will just take the same roll call. I think that is a sad message, a very sad message, and one which affects all of your constituencies because the issue transcends just racial discrimination. Many of you do not have minorities in your districts so you do not care sometimes. They are not a force in your reelection. But I submit to you that Italian-Americans are, Polish-Americans are, every ethnic group that has been discriminated against are constituents of yours. Pennsylvania is a wonderful weave of ethnicity, and for us to stand here tonight and condone and basically indirectly support discrimination against those people is a sad, sad day. It is even sadder than the ripoff of the bill itself.

Mr. President, I urge the Republican Caucus to reconsider. I urge them not to take the last roll call. I urge them to take the time to decide within their own conscience rather than listen to the dictates of their leadership whether or not they think it is okay if their child, whatever ethnic race they are, should be discriminated against simply because they are of that race or of that ethnicity or of that religion. Maybe we think it will never happen to us, and maybe to some of the Members of the Republican Caucus it has never happened. Well, to some of us it has, and we do not think it is right. I beg you, please, not to listen to the dictates of your leadership, not to listen to the lobbyists who say we have to hurry up and get this done. Reprint this bill with this amendment. It is important. It is important to send that message that we will not tolerate discrimination. It is evil, no matter who practices it, no matter for what reason. To do anything else is a desecration of this Chamber and the ideals we embody when we take our oath of office.

Mr. President, it simply should not be, and I am sorry that the gentleman from Northampton, Senator Uliana, thinks it is so funny because I do not, and he being an Italian should understand it more than the average Member on that side of the aisle.

Thank you, Mr. President.

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, Senator Andrezeski has been called to his office, and I request a temporary Capitol leave on his behalf.

The PRESIDENT. Without objection, that leave is granted.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator WILLIAMS and were as follows, viz:

YEAS—21

Afflerbach	Hughes	Musto	Stewart
Andrezeski	Kasunic	O'Pake	Stout
Belan	Kitchen	Porterfield	Tartaglione
Bodack	LaValle	Schwartz	Wagner
Costa	Mellow	Stapleton	Williams
Fumo			

NAYS—29

Armstrong	Hart	Madigan	Salvatore
Bell	Heckler	Mowery	Shaffer
Brightbill	Helfrick	Peterson	Thompson
Corman	Holl	Piccola	Tilghman
Delp	Jubelirer	Punt	Tomlinson
Fisher	Lemmond	Rhoades	Uliana
Gerlach	Loeper	Robbins	Wenger
Greenleaf			

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,
Will the Senate agree to the bill on third consideration?
It was agreed to.

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Blair, Senator Jubelirer, who submits remarks for the record.

(The following remarks were made a part of the record at the request of the gentleman from Blair, Senator JUBELIRER:)

Mr. President, it is rare to see such a major issue move from conception to consideration in one legislative Session. Such progress reflects the unhappiness over relatively high electric rates in parts of the State. But even more, it reflects opportunity. Providing choice in the electric power industry fits with the imperative to make Pennsylvania more competitive. While there have been many steps taken the past several years to repair and improve the job climate of Pennsylvania, reductions in electric costs will make job creators take notice. This is not the usual case of the Commonwealth trying to catch up with our neighbors. Rather, we are moving ahead before other States establish advantage, before job losses are incurred, or job prospects are lost, before the Feds preempt the field and tell us how we must do things. It is supported by such diverse groups as Consumer Advocate, Small Business Advocate, Mayor Rendell of Philadelphia, electric utilities, and large and small businesses.

While it might seem unusual to have soon-to-be competitors cooperating to set the rules, that is the sort of leadership we need in the fight to keep jobs and attract new ones. The interest here is a Pennsylvania interest.

Since I represent rural areas and small communities, I was very concerned about the impact such legislation would have. Within the four counties in my district, there are three rural electric cooperatives. I am pleased that REA's and their consumers are protected in this legislation. The move toward competition does not lessen service or raise rates for rural customers.

Moving from a highly regulated system to a competitive one is probably the most difficult transition to make, in practical terms and in political terms. This package balances the risks and protections in a fair and reasonable fashion. It deserves the chance to work for Pennsylvania.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I was going to make some remarks, but instead I would like to submit them for the record.

The PRESIDENT. The Chair certainly has no objection to that.

(The following remarks were made a part of the record at the request of the gentleman from Lackawanna, Senator MELLOW:)

Mr. President, this is one of those few and far between occasions when I intend to vote "yes" for a particular piece of legislation, even though I have some deep and very serious reservations about this bill. I have a gnawing in my gut that electric rates for residential users might not decrease.

I am concerned that working men and women who struggle each month to pay their electric bills will not benefit. I hope and I trust that is not the case, but I also cannot feel supremely confident because this measure does nothing to guarantee lower rates for anyone.

What I believe we need to do is not only eliminate the possibility of rate increases, but also ensure that enactment of electric competition will not just be a huge windfall for the electric utility companies in this Commonwealth. Unless we can guarantee lower rates for families, then we have done less than what is possible. Moreover, without lower rates, we will continue to lose manufacturing jobs in this Commonwealth. If that is the case, then Pennsylvania's economy will come to a screeching halt and someone will have to answer for it.

We should not be so callous by telling our constituents that their rates will be going down, when in fact we have not guaranteed anything of the sort. Without that kind of guarantee, then we as legislators are left to accept the word of Governor Ridge that electric competition is good for Pennsylvania. Clearly, Mr. President, today's action will not mean we are waving a magic wand and suddenly there will be competition and lower rates throughout this Commonwealth. Electric rates, which is what this issue is supposed to be all about, will not automatically go down as soon as the ink from the Governor's pen has a chance to dry on House Bill No. 1509. No, this is really just the beginning. The real work will fall to the Public Utility Commission. It will be their job to make sure that this legislation is implemented in a way that is truly fair to the ratepayers--the consumers.

Governor Ridge has a responsibility to Pennsylvania's 12 million citizens to keep close tabs on the PUC as they work to implement all aspects of House Bill No. 1509. Should he not fulfill that responsibility, it will result in an economic travesty for all Pennsylvanians. One thing is for sure, if this bill passes without a guarantee, the eyes of Pennsylvania will be focused on Governor Tom Ridge and his Public Utility Commission and the Governor's lack of commitment to fulfill his promises. I would also hope that people do not find themselves with lower rates and yet higher surcharges. That would be the epitome of deceit and mean-spiritedness.

Mr. President, I also would hope that the employee protections built into this bill really do make it possible for those who depend on the electric companies for a paycheck do not suddenly find themselves without work. This bill is perhaps one of the most important pieces of legislation to go through the General Assembly in a decade. Yet, I cannot help but feel a bit of hesitation because I know that once we have voted on it, the real work only begins. I wish we on this side of the aisle would have had more of an opportunity for input. It has been said that the devil is in the details. Well, in this case, the details, and perhaps the devil, will be left to the PUC to handle. We can only hope that House Bill No. 1509 truly is a savior for those who are paying too high a price for electricity.

Mr. President, today I say to Members of the PUC and Governor Ridge: If this bill becomes law, it will be up to you to make sure that it lives up to the promises of lower rates and all that cheaper electrici-

ty can provide such as more manufacturing jobs and continued quality service for the working men and women and their families. If rates go up, then someone will have to answer to the economic disaster that such a move would surely bring. For now, Mr. President, if we are not willing to guarantee lower rates, then we are left with Governor Ridge's word on this issue. This time, Mr. President, I hope the Governor stays true to his word and works to really bring about lower rates for the people of this great Commonwealth.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Wagner, who submits remarks for the record.

(The following remarks were made a part of the record at the request of the gentleman from Allegheny, Senator WAGNER:)

Today, the Senate of Pennsylvania is about to welcome a new baby into this world, a baby known as electric competition. I am a father of two children myself, and as any parent can tell you, the birth of a new baby can be the most amazing and important event in your life. Today, Mr. President, can be the "birthday" of electric competition in the Commonwealth of Pennsylvania. Today, we must decide on an issue that stands above all others, an issue that will have a tremendous impact on the economic future of this Commonwealth.

If we act, Pennsylvania will become the fourth State to legislate electric competition. California, New Hampshire, and Rhode Island have already done so. Two other States, New York and Massachusetts, are moving toward electric competition through a regulatory process. For once, Mr. President, Pennsylvania has the opportunity to be ahead of the game, not playing "catch-up." We cannot overstate the impact that the legislation will have on this Commonwealth.

Mr. President, Americans spend \$260 billion each year on electricity. Here in Pennsylvania, businesses and homeowners spend more than \$10 billion a year on electric bills that are 15 percent higher than the national average. Just bringing our rates down to the national average would save \$1.5 billion a year in the Commonwealth. That is a \$125 savings per person, per year.

Mr. President, House Bill No. 1509 represents what I believe is the true role of a democratic government. It helps people by encouraging competition, empowers citizens with choices, and gives all consumers, including businesses, lower electric rates.

This legislation is also an opportunity, an opportunity to put idle power plants back in operation, and an opportunity to create jobs by attracting employers to our State because of our lower energy costs. The idle power plant issue is significant to southwestern Pennsylvania. Duquesne Light has some of the highest rates in America.

There has been a lot of talk this Session about making Pennsylvania more business friendly. And one of the changes that this General Assembly enacted this year was an attempt to lower Worker's Compensation costs for Pennsylvania businesses. Mr. President, if you take all the money spent by Pennsylvania's business community on Worker's Comp insurance each year and total it up, it would still be less than half of what we spend on electricity each year. That is why this legislation is so important. Industrial consumers in this Commonwealth tell us that electricity can range anywhere from 5 to 70 percent of their total operational costs. Companies like U.S.X., Glennshaw Glass, P.P.G., Bethlehem Steel, and many, many others will benefit tremendously from this legislation, and more importantly, so, too, will those who depend on the economic viability of these companies to earn a living.

Mr. President, Pennsylvania, particularly western Pennsylvania, has been hard hit by a loss of manufacturing jobs in the recent past. Electric competition can help us turn that situation around so our people can return to work and support their families. Just think of the potential benefits to the homeowner or the homeowner with electric heat, the ma and pa grocery store, and the many more examples we could cite. Yes, I had concerns when we first began talking about this

issue. I was concerned about its impact on those who work in the electric industry. Thankfully, Mr. President, there are significant protections built into this legislation for workers. In fact, the I.B.E.W. workers no longer oppose this bill. Mr. President, if we give birth to electric competition today, it will only be the beginning. If we are to be good parents, we must be sure that when we eventually have to turn our newborn baby over to a caregiver, that our caregiver is competent. In this case, the caregiver will be the Pennsylvania Public Utility Commission. As legislators, we must challenge Governor Ridge and the PUC, which his appointees dominate, to carry out the details of this critical public policy issue. We must challenge them to ensure that electric competition will occur in a manner that is consumer friendly and lives up to the promise that the General Assembly intended.

Finally, Mr. President, I would like to recognize the gentleman from Delaware, Senator Bell, for the open, honest, and inclusive manner in which his committee dealt with this issue. We should also recognize the foresight of Commissioner John Hanger who began dealing with this issue long before any of us ever heard of electric competition. In addition, thanks should go out to Commissioner John Quain and all those who participated in the stakeholder's process. I urge a "yes" vote on this legislation.

Thank you.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—40

Afflerbach	Hart	Musto	Shaffer
Andrezeski	Heckler	O'Pake	Stapleton
Armstrong	Helfrick	Peterson	Stewart
Brightbill	Holl	Piccola	Stout
Corman	Jubelirer	Porterfield	Thompson
Costa	Lemmond	Punt	Tilghman
Delp	Loeper	Rhoades	Tomlinson
Fisher	Madigan	Robbins	Uliana
Gerlach	Mellow	Salvatore	Wagner
Greenleaf	Mowery	Schwartz	Wenger

NAYS—10

Belan	Fumo	Kitchen	Tartaglione
Bell	Hughes	LaValle	Williams
Bodack	Kasunic		

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

CONSIDERATION OF CALENDAR RESUMED

THIRD CONSIDERATION CALENDAR

HB 2595 CALLED UP OUT OF ORDER

HB 2595 (Pr. No. 4274) -- Without objection, the bill was called up out of order, from page 2 of the Third Consideration Calendar, by Senator LOEPER.

BILL REREPORTED FROM COMMITTEE AS AMENDED ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2595 (Pr. No. 4274) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of February 19, 1980 (P.L. 15, No.9), known as Real Estate Licensing and Registration Act, providing for commercial real estate broker liens; and further providing for power to promulgate regulations.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, simply for the information of the Members, this is the real estate broker lien bill that we had some discussion about in caucus.

And the question recurring,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—46

Afflerbach	Gerlach	Mowery	Shaffer
Andrezeski	Greenleaf	Musto	Stapleton
Armstrong	Hart	O'Pake	Stewart
Belan	Helfrick	Peterson	Stout
Bell	Holl	Piccola	Tartaglione
Bodack	Hughes	Porterfield	Thompson
Brightbill	Kasunic	Punt	Tilghman
Corman	Kitchen	Rhoades	Tomlinson
Costa	LaValle	Robbins	Uliana
Delp	Loeper	Salvatore	Wagner
Fisher	Madigan	Schwartz	Wenger
Fumo	Mellow		

NAYS—4

Heckler	Jubelirer	Lemmond	Williams
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A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

BILL REREPORTED FROM COMMITTEE AS AMENDED ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2292 (Pr. No. 4283) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, further providing for identification cards and for special occasion permits; providing licenses for regional history centers; providing for multipurpose cultural and science facilities licenses; and further providing for advertising.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

BILLS AMENDED

HB 304 (Pr. No. 4084) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 6, 1987 (P.L. 381, No. 79), known as the Older Adults Protective Services Act, further providing for definitions; providing for criminal history for employees at certain facilities; and making editorial changes.

On the question,

Will the Senate agree to the bill on third consideration?

Senator HECKLER offered the following amendment No. A8032:

Amend Sec. 2 (Sec. 103), page 12, by inserting between lines 17 and 18:

"Recipient." An individual who receives care, services or treatment in or from a facility.

Amend Sec. 5 (Sec. 502), page 26, line 18, by inserting after "APPLICATIONS":, and shall require all administrators and any operators who have or may have direct contact with a recipient to submit.

Amend Sec. 5 (Sec. 503), page 27, line 28, by striking out "AN ADMINISTRATOR" and inserting: a facility

Amend Sec. 5 (Sec. 503), page 27, line 29, by inserting after "EMPLOYEE": required to submit information pursuant to section

502(a)

Amend Sec. 5 (Sec. 503), page 28, line 13, by striking out "AN ADMINISTRATOR" and inserting: a facility

Amend Sec. 5 (Sec. 503), page 28, line 14, by inserting after "APPLICANT": or retain an employee required to submit information pursuant to section 502(a)

Amend Sec. 5 (Sec. 503), page 28, line 14, by inserting after "APPLICANTS": or employee's

Amend Sec. 5 (Sec. 503), page 28, line 15, by inserting after "APPLICANT": or employee

Amend Sec. 5 (Sec. 505), page 29, line 28, by inserting after "INTENTIONALLY": or willfully

Amend Sec. 5 (Sec. 505), page 30, line 2, by inserting after "THAT": intentionally or willfully

Amend Sec. 5 (Sec. 505), page 30, line 15, by inserting after "INTENTIONALLY": or willfully

Amend Sec. 5 (Sec. 505), page 30, line 16 and 17, by striking out "SUMMARY OFFENSE" and inserting: misdemeanor of the third degree

Amend Sec. 5 (Sec. 505), page 30, line 18, by striking out "\$300" and inserting: \$2,500

Amend Sec. 5 (Sec. 505), page 30, line 18, by striking out "90 DAYS" and inserting: one year

Amend Sec. 5 (Sec. 505), page 30, line 20, by inserting after "THAT": intentionally or willfully

Amend Sec. 5 (Sec. 505), page 30, lines 21 and 22, by striking out "SUMMARY OFFENSE" and inserting: misdemeanor of the third degree

Amend Sec. 5 (Sec. 505), page 30, line 23, by striking out "\$300" and inserting: \$2,500

Amend Sec. 5 (Sec. 505), page 30, line 23, by striking out "90 days" and inserting: one year

Amend Sec. 5 (Sec. 506), page 31, by inserting between lines 14 and 15:

(5) The department shall develop guidelines regarding the supervision of applicants. For a home health care agency, supervision shall include random direct supervision by an employee who has been employed by the facility for a period of one year.

Amend Sec. 5 (Sec. 508), page 31, by inserting between lines 27 and 28: (2) If an employee is not exempt under paragraph (1), the employee and the facility shall comply with section 502 within one year of the effective date of this chapter.

Amend Sec. 5 (Sec. 508), page 31, line 28, by striking out "(2)" and inserting: (3)

Amend Sec. 5 (Sec. 508), page 32, line 1, by striking out "(3)" and inserting: (4)

On the question,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

HB 305 (Pr. No. 4085) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 6, 1987 (P. L. 381, No. 79), known as the Older Adults Protective Services Act, further providing for definitions, for reporting and for investigations and for confidentiality of records; providing for reporting suspected abuse by employees; and making editorial changes.

On the question,

Will the Senate agree to the bill on third consideration?

Senator HECKLER offered the following amendment No. A8184:

Amend Title, page 1, lines 7 and 8, by striking out "adding definitions of "registry" and "serious bodily injury";"

Amend Title, page 1, line 12, by striking out the comma after "REPORTING" and inserting: and

Amend Title, page 1, lines 12 and 13, by striking out "AND FOR CONFIDENTIALITY OF RECORDS"

Amend Sec. 2 (Sec. 103), page 6, lines 25 and 26, by striking out all of said lines

Amend Sec. 4 (Sec. 302), page 10, by inserting between lines 26 and 27:

(e) Penalties for failure to report.—A person required under this section to report a case of suspected abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

Amend Sec. 4 (Sec. 303), page 11, lines 2 through 9, by striking out "Upon the receipt of a report of a suspicious" in line 2, all of lines 3 through 8 and "report will be substantiated." in line 9

Amend Sec. 4 (Sec. 303), page 11, line 18, by striking out the bracket before "Any"

Amend Sec. 4 (Sec. 303), page 11, lines 22 through 24, by striking out "]" If a report concerns a resident of a State-licensed" in line 22, all of line 23 and "facility of the initiation of the investigation." in line 24

Amend Sec. 4 (Sec. 303), page 12, lines 22 through 30; page 13, lines 1 through 9, by striking out all of said lines on said pages

Amend Sec. 4 (Sec. 306), page 16, line 19, by striking out the bracket before "In"

Amend Sec. 4 (Sec. 306), page 16, line 20, by striking out "]" Law"

Amend Sec. 4 (Sec. 306), page 16, line 22, by inserting a period after "department"

Amend Sec. 4 (Sec. 306), page 16, lines 22 and 23, by striking out "for the purposes" in line 22 and all of line 23

Amend Sec. 4 (Sec. 306), page 17, lines 15 through 18, by striking out all of said lines

Amend Sec. 5, page 22, lines 16 through 30; page 23, lines 1 through 30; and page 24, line 1, by striking out all of said lines on said pages

Amend Sec. 6, page 24, line 2, by striking out "6" and inserting: 5

Amend Sec. 7, page 24, line 7, by striking out "7" and inserting: 6

Amend Sec. 7 (Sec. 701), page 24, lines 12 through 30; page 25, lines 1 through 9, by striking out all of said lines on said pages and inserting:

(1) An employee or an administrator who has reasonable cause to suspect that a recipient is a victim of abuse shall immediately make an oral report to the agency. An employee shall notify the administrator immediately following the report to the agency.

(2) Within 48 hours of making the oral report, the employee or administrator shall make a written report to the agency. The agency shall notify the administrator that a report of abuse has been made with the agency.

(3) The employee may request the administrator to make, or to assist the employee to make, the oral and written reports required by this subsection.

(b) Mandatory reports to law enforcement officials.—

(1) An employee or an administrator who has reasonable cause to suspect that a recipient is the victim of sexual abuse or serious bodily injury or that a death is suspicious shall immediately contact law enforcement officials to make an oral report. An employee shall notify the administrator immediately following the report to law enforcement officials.

(2) Within 48 hours of making the oral report, the employee and an administrator shall make a written report to appropriate law enforcement officials.

(3) The law enforcement officials shall notify the administrator that a report has been made with the law enforcement officials.

(4) The employee may request the administrator to make, or to assist the employee to make, the oral and written reports to law enforcement required by this subsection.

Amend Sec. 7 (Sec. 702), page 25, lines 28 and 29, by striking out "TO THE AGENCY AND THE DEPARTMENT"

Amend Sec. 7 (Sec. 702), page 26, line 4, by striking out "SUBJECTS OF THE REPORT" and inserting: alleged perpetrator and victim

Amend Sec. 7 (Sec. 702), page 26, line 8, by inserting after "ABUSE" to the victim

Amend Sec. 7 (Sec. 705), page 29, line 14, by striking out "SUBJECT OF REPORT" and inserting: alleged perpetrator and victim

Amend Sec. 7 (Sec. 705), page 29, line 15, by striking out "A SUBJECT OF A REPORT" and inserting: an alleged perpetrator and victim

Amend Sec. 7 (Sec. 706), page 29, line 26, by inserting after "INTENTIONALLY": or willfully

Amend Sec. 7 (Sec. 706), page 29, line 27, by inserting after "COMPLIANCE": with the provisions of this chapter or who intimidates or commits a retaliatory act against an employee who complies in good faith

Amend Sec. 7 (Sec. 706), page 29, line 30, by inserting after "THAT": intentionally or willfully

Amend Sec. 7 (Sec. 706), page 29, line 30, by striking out the comma after "WITH"

Amend Sec. 7 (Sec. 706), page 30, line 1, by striking out "WITH" and inserting: with this chapter or that intimidates or commits a retaliatory act against an employee who complies in good faith with

Amend Sec. 7 (Sec. 706), page 30, line 13, by inserting after "INTENTIONALLY": or willfully

Amend Sec. 7 (Sec. 706), page 30, lines 14 and 15, by striking out "SUMMARY OFFENSE" and inserting: misdemeanor of the third degree

Amend Sec. 7 (Sec. 706), page 30, line 16, by striking out "\$300" and inserting: \$2,500

Amend Sec. 7 (Sec. 706), page 30, line 16, by striking out "90 DAYS" and inserting: one year

Amend Sec. 7 (Sec. 706), page 30, line 18, by inserting after "THAT": intentionally or willfully

Amend Sec. 7 (Sec. 706), page 30, lines 19 and 20, by striking out "SUMMARY OFFENSE" and inserting: misdemeanor of the third degree

Amend Sec. 7 (Sec. 706), page 30, line 21, by striking out "\$300" and inserting: \$2,500

Amend Sec. 7 (Sec. 706), page 30, line 21, by striking out "90 DAYS" and inserting: one year

Amend Sec. 8, page 30, line 27, by striking out "8" and inserting: 7

Amend Sec. 9, page 31, line 1, by striking out "9" and inserting: 8

Amend Sec. 10, page 31, line 8, by striking out "10" and inserting: 9

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Bucks, Senator Heckler.

Senator HECKLER. Mr. President, this is an amendment which reflects deliberations and work done both by our Caucus and the gentlewoman from Philadelphia, Senator Schwartz, and others, and I move its adoption.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

HB 306 (Pr. No. 4086) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for Statewide nurse aide training programs relating to nursing facilities.

On the question,

Will the Senate agree to the bill on third consideration?

Senator HECKLER offered the following amendment No. A8040:

Amend Sec. 5, page 7, line 5, by striking out "AID" and inserting: aide

Amend Sec. 9, page 9, line 28, by striking out "1996" and inserting: 1997

On the question,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

BILL OVER IN ORDER

HB 647 -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 685 (Pr. No. 4002) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, further providing for auditors, for board of supervisors, for appointment of accountant, for personal property, for regulation of business, for ordinances, for appointment of police, for special fire police, for letting contracts and for liens for assessments.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger

Fumo
Gerlach

Loeper
Madigan

Schwartz

Williams

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

BILLS AMENDED

HB 974 (Pr. No. 3587) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, empowering the Governor to authorize the transfer of certain convicted offenders pursuant to outstanding treaties; providing for Accelerated Rehabilitative Disposition; and making a repeal.

On the question,

Will the Senate agree to the bill on third consideration?

Senator MELLOW offered the following amendment No. A7216:

Amend Title, page 1, line 2, by inserting after "Statutes,": further regulating liquidated damages;

Amend Bill, page 1, lines 8 and 9, by striking out all of said lines and inserting:

Section 1. Section 8104(b) of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 8104. Duty of judgment creditor to enter satisfaction.

* * *

(b) Liquidated damages.—A judgment creditor who shall [fail] willfully or unreasonably fail without good cause or refuse for more than [30] 90 days after written notice in the manner prescribed by general rules to comply with a request pursuant to subsection (a) shall pay to the judgment debtor as liquidated damages 1% of the original amount of the judgment for each [day] month of delinquency beyond such [30] 90 days, but not less than \$250 nor more than [50% of the original amount of the judgment] \$2,500. Such liquidated damages shall be recoverable pursuant to general rules, by supplementary proceedings in the matter in which the judgment was entered.

Section 2. Chapter 91 of Title 42 is amended by adding a subchapter to read:

Amend Sec. 2, page 2, line 5, by striking out "2" and inserting:

3

Amend Sec. 3, page 2, line 10, by striking out "3" and inserting:

4

Amend Sec. 4, page 2, line 14, by striking out "4" and inserting:

5

Amend Bill, page 2, by inserting between lines 18 and 19:

Section 6. The amendment of 42 Pa.C.S. § 8104 shall be retroactive to January 1, 1995.

Amend Sec. 5, page 2, line 19, by striking out "5" and inserting:

7

On the question,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

HB 981 (Pr. No. 4286) -- The Senate proceeded to consideration of the bill, entitled:

An Act establishing the Special Independent Prosecutor's Panel and providing for its powers and duties; and providing for special investigative counsel and for independent counsel.

On the question,

Will the Senate agree to the bill on third consideration?

Senator PICCOLA offered the following amendment No. A8027:

Amend Table of Contents, page 2, lines 28 and 29, by striking out all of said lines and inserting:

Section 1101. Severability.

Section 1102. Expiration.

Section 1103. Effective date.

Amend Sec. 301, page 4, line 7, by inserting a period after "years"

Amend Sec. 301, page 4, lines 7 through 9, by striking out ", after which the member may be" in line 7 and all of lines 8 and 9 and inserting: Judges who are members of the panel and are required to retire under section 16 of Article V of the Constitution of Pennsylvania shall also vacate their positions on the panel, unless assigned under Chapter 7 of the Rules of Judicial Administration. A judge who is otherwise removed from office shall automatically forfeit the position held by that judge on the panel.

Amend Sec. 301, page 4, by inserting between lines 15 and 16:
(e) Clerk.—The Prothonotary of Commonwealth Court shall serve as the clerk of the panel and shall provide such services as are needed by the panel.

(f) Restriction.—No member of the panel who participated in a function conferred on the panel under this act involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves the independent counsel and which involves the exercise of the independent counsel's official duties, regardless of whether the independent counsel is still serving in that office.

Amend Sec. 302, page 4, line 25, by removing the period after "degree" and inserting: , except those misdemeanors that involve a breach of the public trust, including the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, and the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.

Amend Sec. 302, page 4, line 27, by striking out "The" and inserting: The Attorney General shall request the General Counsel to appoint a special investigative counsel to conduct a preliminary investigation under the jurisdiction established or conferred under section 205(b) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and where the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Attorney General's office may result in a personal, financial or political conflict of interest. In addition, the

Amend Sec. 302, page 5, line 7, by striking out "Assistant" and inserting: Deputy

Amend Sec. 303, page 7, line 6, by inserting after "the" where it appears the second time: date of the

Amend Sec. 303, page 7, line 7, by striking out "and the date of the commencement"

Amend Sec. 304, page 8, lines 11 and 12, by striking out "PLACED" in line 11 and all of line 12 and inserting: confidential and not subject to public disclosure, except that the person who was the subject of the investigation may request a copy of the summary from the panel.

Amend Sec. 308, page 9, line 28, by inserting after "The": determination of the

Amend Sec. 308, page 9, line 28, by striking out "determination"

Amend Sec. 309, page 11, line 24, by striking out "in no less"

and inserting: no later

Amend Sec. 309, page 11, line 25, by inserting after "days": after the receipt of the application

Amend Sec. 309, page 12, line 4, by inserting after "Commonwealth.": No person who is serving as a special investigative counsel may be appointed or serve as an independent counsel in the matter for which they had been appointed to investigate as special investigative counsel.

Amend Sec. 309, page 12, line 14, by removing the comma after "degree" and inserting: not involving a breach of the public trust under the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, or under the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law,

Amend Sec. 309, page 13, by inserting between lines 27 and 28:

(5) If the independent counsel discovers or receives information about possible violations of criminal law by persons other than those provided for in section 302 and which are not covered by the prosecutorial jurisdiction of the independent counsel, and a request for expansion under this subsection has not been made by the General Counsel or the request for expansion under this subsection has been denied by the panel, the independent counsel shall submit the information to the appropriate law enforcement authority.

Amend Sec. 504, page 17, lines 1 through 3, by striking out "The Office of General Counsel shall pay all costs" in line 1, all of line 2 and "independent counsel. The General Counsel" in line 3 and inserting: Upon the request of the Governor, the General Assembly shall appropriate the necessary funds to the State Treasurer for the use and operation in executing the duties and responsibilities of the position of independent counsel. The State Treasurer

Amend Sec. 512, page 21, line 16, by striking out "each quarter"

Amend Sec. 512, page 21, line 17, by striking out "and" and inserting: as required under section 507(a)(1). In addition, the independent counsel shall

Amend Sec. 513, page 23, line 4, by striking out "shall" and inserting: may

Amend Sec. 513, page 23, line 18, by inserting after "COURT.": A member of the panel may not hear or determine any such civil action or any appeal of a decision in any such civil action.

Amend Sec. 516, page 24, line 27, by striking out "Dauphin County" and inserting: determined in accordance with the Pennsylvania Rules of Criminal Procedure

Amend Bill, page 25, by inserting between lines 2 and 3: Section 1101. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Amend Sec. 1101, page 25, line 3, by striking out "1101" and inserting: 1102

Amend Sec. 1102, page 25, line 10, by striking out "1102" and inserting: 1103

On the question,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 1116 (Pr. No. 4127) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 1, 1933 (P.L.103, No.69), known as The Second Class Township Code, further providing for appropriations for training fire personnel and for fire training schools or centers.

Considered the third time and agreed to,
And the amendments made thereto having been printed as
required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions
of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted
"aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to
the House of Representatives with information that the Senate
has passed the same with amendments in which concurrence
of the House is requested.

BILL OVER IN ORDER

HB 1117 -- Without objection, the bill was passed over in
its order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE

HB 1118 (Pr. No. 4129) -- The Senate proceeded to consid-
eration of the bill, entitled:

An Act amending the act of February 1, 1966 (1965 P.L.1656,
No.581), known as The Borough Code, further providing for contracts
and purchases; and providing for appropriations for training fire per-
sonnel and for fire training schools and centers.

Considered the third time and agreed to,
And the amendments made thereto having been printed as
required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions
of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout

Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted
"aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to
the House of Representatives with information that the Senate
has passed the same with amendments in which concurrence
of the House is requested.

BILL RECOMMITTED

SB 1122 (Pr. No. 2394) -- The Senate proceeded to consid-
eration of the bill entitled:

An Act amending the act of October 15, 1975 (P. L. 390, No.
111), entitled "Health Care Services Malpractice Act," further provid-
ing for definitions, for statutes of limitation, for professional liability
insurance and the Medical Professional Liability Catastrophe Loss
Fund, for administration of that fund and for liability of excess carri-
ers; providing for a Medical Professional Insurance Fund Advisory
Board and for surcharge limits; and further providing for plan opera-
tion and rates, for reports to the Insurance Commissioner, for forms
of doing business and for the Joint Study Committee.

Upon motion of Senator LOEPER, and agreed to, the bill
was recommitted to the Committee on Banking and Insurance.

BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE

SB 1166 (Pr. No. 1362) -- The Senate proceeded to consid-
eration of the bill, entitled:

An Act authorizing the Department of General Services, with the
approval of the Governor, to sell and convey to Growth Horizons,
Inc., certain improved land situate in the Township of Bristol, Bucks
County.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions
of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger

Fumo
GerlachLoeper
Madigan

Schwartz

Williams

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL REREFERRED

HB 1181 (Pr. No. 4265) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for orders for protection from domestic abuse and for the release of confidential reports.

Upon motion of Senator LOEPER, and agreed to, the bill was rereferred to the Committee on Appropriations.

BILL AMENDED

SB 1470 (Pr. No. 2439) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for causes of action; and providing for priority of restitution.

On the question,

Will the Senate agree to the bill on third consideration?

Senator COSTA offered the following amendment No. A7953:

Amend Sec. 1 (Sec. 8313), page 1, line 11, by inserting after "a":
valid

Amend Sec. 1 (Sec. 8313), page 1, line 16, by inserting after "a":
valid

On the question,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

BILLS OVER IN ORDER

SB 1559 and HB 1972 -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL OVER IN ORDER TEMPORARILY

HB 2118 -- Without objection, the bill was passed over in its order temporarily at the request of Senator LOEPER.

BILL REREFERRED

HB 2243 (Pr. No. 2859) -- The Senate proceeded to consideration of the bill, entitled:

An Act prohibiting certain fees for the use of State property for the purpose of making commercial motion pictures.

Upon motion of Senator LOEPER, and agreed to, the bill was rereferred to the Committee on Appropriations.

BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE

HB 2348 (Pr. No. 3035) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for retail theft.

Considered the third time and agreed to,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

BILL REREFERRED

HB 2362 (Pr. No. 4266) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for wiretapping and electronic surveillance and for windshield obstructions.

Upon motion of Senator LOEPER, and agreed to, the bill was rereferred to the Committee on Appropriations.

BILL AMENDED

HB 2393 (Pr. No. 4267) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 54 (Names) of the Pennsylvania Consolidated Statutes, providing for mandatory minimum penalty for possession of a controlled substance by an inmate; requiring the Pennsylvania State Police to receive notification when the court orders a change of name for a person with a criminal record; regulating change of name after conviction of a felony; and further providing for certain injunctive relief.

On the question,

Will the Senate agree to the bill on third consideration?

Senator BRIGHTBILL offered the following amendment No. A8202:

Amend Sec. 1 (Sec. 9115), page 1, line 18, by inserting after "misdemeanor": The court shall provide, with the request, a set of the petitioner's fingerprints.

Amend Sec. 1 (Sec. 9115), page 2, line 1, by inserting after "investigation": , including fingerprinting.

Amend Sec. 1 (Sec. 9115), page 2, by inserting between lines 10 and 11:

(c) Exception.—The procedure in this section shall not apply to proceedings involving:

(1) An election to resume a prior surname pursuant to 54 Pa.C.S. § 704 (relating to divorced person may resume prior name).

(2) Name changes involving minor children in adoption proceedings pursuant to 23 Pa.C.S. § 2904 (relating to name of adoptee).

On the question,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

Will the Senate agree to the bill on third consideration, as amended?

Senator ULIANA offered the following amendment No. A8216:

Amend Title, page 1, line 2, by inserting after "Statutes,": providing for mandatory minimum penalty for possession of a controlled substance by an inmate;

Amend Bill, page 1, lines 9 and 10, by striking out all of said lines and inserting:

Section 1. Section 5123 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 5123. Contraband.

* * *

(a.2) Possession of controlled substance contraband by inmate prohibited.—A prisoner or inmate commits a [misdemeanor of the first degree] felony of the second degree if he unlawfully has in his possession or under his control any controlled substance in violation of section 13(a)(16) of The Controlled Substance, Drug, Device and Cosmetic Act. For purposes of this subsection, no amount shall be deemed de minimis. Any inmate convicted of a violation of this subsection shall be sentenced to a minimum sentence of at least two years of total confinement notwithstanding any other provision of this title or any other statute to the contrary. Nothing in this subsection shall prevent the sentencing court from imposing a sentence greater than that provided in this subsection, up to the maximum penalty prescribed by this title for a felony of the second degree. There shall be no authority in any court to impose on an offender to which this subsection is applicable any lesser sentence than provided for in this subsection or to place such offender on probation or to suspend sentence. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this subsection. If a sentencing court refuses to apply this subsection where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this subsection if it finds that the sentence was imposed in violation of this subsection.

* * *

Section 2. Title 18 is amended by adding a section to read:

Amend Sec. 2, page 2, line 11, by striking out "2" and inserting:

3

Amend Sec. 3, page 4, line 8, by striking out "3" and inserting:

4

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, we did not have this amendment in caucus, and would the maker of the amendment explain it to us.

Senator ULIANA. Yes, Mr. President, very briefly. Presently in statute, anybody who brings drugs into a prison, whether they are a guard or visitor, has a 2-year mandatory minimum. We set that last year. There is a loophole, though, in that if a prisoner is possessing drugs, they do not have the same mandatory minimum. What they have is trial by the laws of the Commonwealth as they exist now for someone who is on the outside. This amendment is meant to ensure that everybody inside the prison, whether they are a prisoner, guard, or visitor, who is possessing drugs has the same offense levied against them.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 2401 (Pr. No. 3213) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for bad checks.

Considered the third time and agreed to,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

BILL OVER IN ORDER

HB 2403 -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL AMENDED

HB 2522 (Pr. No. 3785) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for harassment and stalking; prohibiting the provision of certain stimulants to minors; and providing penalties.

On the question,

Will the Senate agree to the bill on third consideration?

Senator MELLOW, on behalf of Senator O'PAKE, offered the following amendment No. A8071:

Amend Title, page 1, line 3, by inserting after "STALKING": and for arson and related offenses

Amend Sec. 1, page 2, lines 4 through 6, by striking out all of said lines and inserting:

Section 1. Sections 2709(c)(1) and 3301(d) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

Amend Sec. 1, page 2, by inserting between lines 18 and 19: § 3301. Arson and related offenses.

* * *

(d) Reckless burning or exploding.—A person commits a felony of the third degree if he intentionally starts a fire or causes an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another, and thereby recklessly:

(1) places an uninhabited building or unoccupied structure of another in danger of damage or destruction; or

(2) [places any personal property of another having a value of \$5,000 or more] places any personal property of another having a value that exceeds \$5,000, or if the property is an automobile, airplane, motorcycle, motorboat or other motor propelled vehicle in danger of damage or destruction.

* * *

On the question,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

BILLS OVER IN ORDER

HB 2579 and HB 2592 -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL REREFERRED

HB 2627 (Pr. No. 4249) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law,

further providing for definitions, for duties of facility owners, for a One Call System, and for designers and contractors for a One Call System; and providing for penalties.

Upon motion of Senator LOEPER, and agreed to, the bill was rereferred to the Committee on Appropriations.

SECOND CONSIDERATION CALENDAR

BILLS RECOMMMITTED

SB 1672 (Pr. No. 2341) -- The Senate proceeded to consideration of the bill entitled:

An Act amending the act of July 7, 1947 (P. L. 1368, No. 542), entitled, as amended, "Real Estate Tax Sale Law," restricting the rights of certain persons to purchase property subject to sale under this act; and imposing additional powers and duties on local municipalities and tax claim bureaus.

Upon motion of Senator LOEPER, and agreed to, the bill was recommitted to the Committee on Urban Affairs and Housing.

SB 1673 (Pr. No. 2342) -- The Senate proceeded to consideration of the bill entitled:

An Act requiring purchasers of real estate with buildings thereon to bring the buildings into compliance with municipal codes; and imposing penalties.

Upon motion of Senator LOEPER, and agreed to, the bill was recommitted to the Committee on Urban Affairs and Housing.

SB 1674 (Pr. No. 2339) -- The Senate proceeded to consideration of the bill entitled:

An Act amending the act of July 7, 1947 (P. L. 1368, No. 542), entitled, as amended, "Real Estate Tax Sale Law," further providing for limitations on owners and for purchases from the repository for unsold property.

Upon motion of Senator LOEPER, and agreed to, the bill was recommitted to the Committee on Urban Affairs and Housing.

SB 1675 (Pr. No. 2343) -- The Senate proceeded to consideration of the bill entitled:

An Act amending the act of June 23, 1931 (P. L. 932, No. 317), entitled "The Third Class City Code," authorizing the adoption of property maintenance ordinances; and further providing for fines and penalties.

Upon motion of Senator LOEPER, and agreed to, the bill was recommitted to the Committee on Urban Affairs and Housing.

SB 1676 (Pr. No. 2344) -- The Senate proceeded to consideration of the bill entitled:

An Act amending the act of July 15, 1957 (P. L. 901, No. 399), entitled "Optional Third Class City Charter Law," authorizing the adoption of property maintenance ordinances; and further providing for fines and penalties.

Upon motion of Senator LOEPER, and agreed to, the bill was recommitted to the Committee on Urban Affairs and Housing.

**BILL ON SECOND CONSIDERATION
AND REREFERRED**

HB 2046 (Pr. No. 4288) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 10, 1968 (P.L.1158, No.365), entitled "An act creating and establishing the Legislative Data Processing Committee: providing for its membership; prescribing its powers, functions and duties; and making an appropriation," providing for the members of the Legislative Data Processing Committee and for access to legislative information within computer information systems by persons outside the General Assembly.

Considered the second time and agreed to,
Ordered, To be printed for third consideration.

Upon motion of Senator LOEPER, and agreed to, the bill just considered was rereferred to the Committee on Appropriations.

**HB 497, HB 682, HB 683, HB 684,
HB 686, HB 1182 AND HB 2379 TAKEN
FROM THE TABLE**

Senator LOEPER. Mr. President, I move that House Bill No. 497, Printer's No. 3098, House Bill No. 682, Printer's No. 1647, House Bill No. 683, Printer's No. 755, House Bill No. 684, Printer's No. 756, House Bill No. 686, Printer's No. 758, House Bill No. 1182, Printer's No. 3561, and House Bill No. 2379, Printer's No. 3562, be taken from the table and placed on the Calendar.

The motion was agreed to.

The PRESIDENT. The bills will be placed on the Calendar.

**SPECIAL ORDER OF BUSINESS
ANNOUNCEMENT BY THE SECRETARY**

The SECRETARY. Consent has been given for the Committee on Rules and Executive Nominations to meet imminently in the Rules room to consider the following Senate Bills: 31, 150, 537, 1098, 1315, 1316, 1317, 1322, 1397, House Bills No. 299 and 2031, and certain nominations.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, before taking up the remainder of Unfinished Business, which is one bill left on the Calendar with certain amendments to it which may generate some debate, at this point I would like to ask for a recess of the Senate, first for the purpose of a meeting of the Committee on Rules and Executive Nominations, to be followed immediately by a meeting of the Committee on Appropriations in the Rules room at the rear of the Senate Chamber.

The PRESIDENT. The Senate stands in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

REPORTS FROM COMMITTEES

Senator LOEPER, from the Committee on Rules and Executive Nominations, reported the following bills:

SB 31 (Pr. No. 2379) (Rereported) (Concurrence)

An Act amending the act of May 17, 1921 (P. L. 682, No. 284), entitled "The Insurance Company Law of 1921," further providing for investments, for certificates of authority for issuance of nonassessable policies, for life and endowment insurance and annuities, for limitation on actions, for alternative plan of conversion and for mutual companies insolvent or in hazardous financial condition.

SB 150 (Pr. No. 2456) (Amended) (Rereported) (Concurrence)

An Act regulating the licensure of electrical contractors; establishing the State Board of Electrical Contractors and providing for its powers and duties; making an appropriation; and providing penalties.

SB 537 (Pr. No. 2457) (Amended) (Rereported) (Concurrence)

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for recovery of costs related to certain distribution system improvement projects; and providing for State correctional institutions.

SB 1098 (Pr. No. 2453) (Amended) (Rereported) (Concurrence)

An Act amending the act of April 9, 1929 (P. L. 343, No. 176), entitled, as amended, "The Fiscal Code," further providing for investment of moneys of the Commonwealth; providing for the Zoological Enhancement Fund and for transfers from the Motor License Fund, for the Organ Donation Awareness Trust Fund; and making a repeal.

SB 1315 (Pr. No. 2426) (Rereported) (Concurrence)

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for deceptive business practices; and prohibiting use of tobacco in schools.

SB 1316 (Pr. No. 2427) (Rereported) (Concurrence)

An Act amending the act of December 17, 1968 (P. L. 1224, No. 387), entitled "Unfair Trade Practices and Consumer Protection Law," further defining "unfair methods of competition" and "unfair or deceptive acts or practices"; further providing for unlawful acts or practices, for sales contracts and for civil penalties; and providing for attorney fees in private actions.

SB 1317 (Pr. No. 2388) (Rereported) (Concurrence)

An Act providing for registration requirements for telemarketers and for powers and duties of the Office of Attorney General.

SB 1322 (Pr. No. 2401) (Rereported) (Concurrence)

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, amending provisions relating to child victims and witnesses.

SB 1397 (Pr. No. 2389) (Rereported) (Concurrence)

An Act reenacting and amending the act of July 10, 1986 (P. L. 1263, No. 116), entitled "Community Services Act," further providing for functions of the agency and for apportionment of appropriations; and extending the expiration date of the act.

HB 299 (Pr. No. 4305) (Amended) (Rereported)

An Act amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, allowing owners of securities to register the title to same in transfer-on-death form; and providing for reports for school district trustees.

HB 2031 (Pr. No. 4306) (Amended) (Rereported)

An Act amending the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, providing for permit provisions; further providing for civil penalties and criminal penalties and for joint inspections with host municipalities; and making a repeal.

Senator TILGHMAN, from the Committee on Appropriations, reported the following bills:

HB 1181 (Pr. No. 4304) (Amended) (Rereported)

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for orders for protection from domestic abuse and for the release of confidential reports.

HB 2046 (Pr. No. 4288) (Rereported)

An Act amending the act of December 10, 1968 (P.L.1158, No.365), entitled "An act creating and establishing the Legislative Data Processing Committee: providing for its membership; prescribing its powers, functions and duties; and making an appropriation," providing for the members of the Legislative Data Processing Committee and for access to legislative information within computer information systems by persons outside the General Assembly.

HB 2627 (Pr. No. 4249) (Rereported)

An Act amending the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law, further providing for definitions, for duties of facility owners, for a One Call System, and for designers and contractors for a One Call System; and providing for penalties.

HB 2703 (Pr. No. 4285) (Rereported)

An Act amending the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, further providing for definitions, for determination of contribution rates and for employer reserve accounts.

Senator CORMAN, from the Committee on Transportation, reported the following bill:

HB 640 (Pr. No. 4295) (Amended) (Rereported)

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for wheel chairs and electrical mobility devices and for handicapped plate and placard and for railroad crossings; providing for special registration plates for Vietnam veterans; and further providing for permits for movements of goods during manufacture and for the maximum height of vehicles and for permits for movement of wooden structures; prohibiting use of dyed diesel fuel; authorizing agents to perform inspections; authorizing the Commonwealth to enter into agreements with private firms for the devel-

opment, financing, design, construction and operation of highways; and providing for the powers and duties of the Department of Transportation, for studying the feasibility of making existing State highways privately operated highways and for the contracting of maintenance and law enforcement services; and providing penalties.

REPORT FROM COMMITTEE ON RULES AND EXECUTIVE NOMINATIONS

Senator LOEPER, from the Committee on Rules and Executive Nominations, reported the following nominations made by His Excellency, the Governor of the Commonwealth, which were read by the Clerk as follows:

MEMBER OF THE STATE BOARD OF EDUCATION

October 2, 1996

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, James R. Agras, 73 Lebanon Hills Drive, Pittsburgh 15228, Allegheny County, Thirty-seventh Senatorial District, for reappointment as a member of the State Board of Education, to serve until October 1, 2002 or until his successor is appointed and qualified.

THOMAS J. RIDGE
Governor

MEMBER OF THE WORKMEN'S COMPENSATION APPEAL BOARD

October 4, 1996

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Herbert Hoffman, 1001 Eric Drive, Harrisburg 17102, Dauphin County, Fifteenth Senatorial District, for appointment as a member of the Workmen's Compensation Appeal Board, to serve until the third Tuesday of January 1999, and until his successor is appointed and qualified, vice Leta Pittman, Esquire, Pittsburgh, declined appointment.

THOMAS J. RIDGE
Governor

MEMBER OF THE PENNSYLVANIA LIQUOR CONTROL BOARD

November 13, 1996

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, George F. McManus, 312 Glenn Road, Camp Hill 17011, Cumberland County, Thirty-first Senatorial District, for appointment as a member of the Pennsylvania Liquor Control Board, to serve until the third Tuesday in May 2000, vice Oliver L. Slinker, Harrisburg, whose term expired.

THOMAS J. RIDGE
Governor

**MEMBER OF THE COMMONWEALTH OF
PENNSYLVANIA COUNCIL ON THE ARTS**

October 28, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Elaine M. Cassalia, 1 Moredon Road, Huntingdon Valley 19006, Montgomery County, Twelfth Senatorial District, for reappointment as a member of the Commonwealth of Pennsylvania Council on the Arts, to serve until July 1, 1998 and until her successor is appointed and qualified.

THOMAS J. RIDGE
Governor

**MEMBER OF THE CHILDREN'S
TRUST FUND BOARD**

October 28, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Stuart Levin, 151 Conestoga Road, Malvern 19355, Chester County, Nineteenth Senatorial District, for appointment as a member of the Children's Trust Fund Board, to serve for a term of three years, and until his successor is appointed and qualified, vice Sharon S. Laverdure, East Stroudsburg, whose term expired.

THOMAS J. RIDGE
Governor

**MEMBER OF THE DELAWARE VALLEY
REGIONAL PLANNING COMMISSION**

August 26, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Timothy J. Carson, 227 Curwen Road, Rosemont 19010, Montgomery County, Seventeenth Senatorial District, for appointment as a member of the Delaware Valley Regional Planning Commission, to serve until terminated, vice Robert S. Taylor, Esquire, Doylestown, resigned.

THOMAS J. RIDGE
Governor

**MEMBER OF THE STATE BOARD
OF EDUCATION**

November 8, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Robert V. Iosue, Ph.D., R. D. #1, Box 1392, Spring Grove 17362, York County, Twenty-eighth Senatorial District, for appointment as a member of the State Board of Education, to serve until October 1, 2002 or until his successor is

appointed and qualified, vice John C. Pittenger, Esquire, Nottingham, resigned.

THOMAS J. RIDGE
Governor

**MEMBER OF THE STATE BOARD
OF EDUCATION**

November 8, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Wallace H. Nunn, 1030 Mason Avenue, Drexel Hill 19026, Delaware County, Twenty-sixth Senatorial District, for appointment as a member of the State Board of Education, to serve until October 1, 2002 or until his successor is appointed and qualified, vice William R. Smith, Indiana, resigned.

THOMAS J. RIDGE
Governor

**MEMBER OF THE STATE BOARD
OF LANDSCAPE ARCHITECTS**

October 28, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Geralyn M. Barbato (Public Member), 1013 Nicholas Drive, West Chester 19380, Chester County, Nineteenth Senatorial District, for appointment as a member of the State Board of Landscape Architects, to serve until September 20, 1998 and until her successor is appointed and qualified, but not longer than six months beyond that period, vice Diana R. Jannetta, Pittsburgh, resigned.

THOMAS J. RIDGE
Governor

MEMBER OF THE STATE BOARD OF MEDICINE

July 26, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Keith R. Bloom (Public Member), 1353 School Street, Indiana 15701, Indiana County, Forty-first Senatorial District, for appointment as a member of the State Board of Medicine, to serve for a term of four years or until his successor is appointed and qualified, but not longer than six months beyond that period, vice Daniel J. West, Jr., Ph.D., Gouldsboro, whose term expired.

THOMAS J. RIDGE
Governor

**COMMONWEALTH TRUSTEE OF THE UNIVERSITY
OF PITTSBURGH--OF THE COMMONWEALTH
SYSTEM OF HIGHER EDUCATION**

November 4, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Elizabeth Jeanne Gleason, 552 Elknud Lane, Johnstown 15905-2064, Cambria County, Thirty-fifth Senatorial District, for reappointment as a Commonwealth Trustee of the University of Pittsburgh—of the Commonwealth System of Higher Education, to serve until October 5, 2000, and until her successor is appointed and qualified.

THOMAS J. RIDGE
Governor

**MEMBER OF THE STATE TRANSPORTATION
COMMISSION**

July 1, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Bonney C. Daubenspeck, 4921 Tramaralac Lane, Erie 16505, Erie County, Forty-ninth Senatorial District, for appointment as a member of the State Transportation Commission, to serve for a term of six years and until her successor is appointed and qualified, but not longer than six months beyond that period, vice Edwin W. Parkinson, Lemoyne, deceased.

THOMAS J. RIDGE
Governor

NOMINATIONS LAID ON THE TABLE

Senator LOEPER. Mr. President, I request that the nominations just read by the Clerk be laid on the table.

The PRESIDENT. The nominations will be laid on the table.

EXECUTIVE NOMINATION

EXECUTIVE SESSION

Motion was made by Senator LOEPER,

That the Senate do now resolve itself into Executive Session for the purpose of considering a certain nomination made by the Governor.

Which was agreed to.

NOMINATION TAKEN FROM THE TABLE

Senator LOEPER. Mr. President, I call from the table a certain nomination and ask for its consideration.

The Clerk read the nomination as follows:

JUDGE, COURT OF COMMON PLEAS,
DELAWARE COUNTY

September 18, 1996

To the Honorable, the Senate of the Commonwealth of
Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, James Proud, Esquire, 26 Rabbit Run, Rose Valley Borough 19086, Delaware County, Ninth Senatorial District, for appointment as Judge of the Court of Common Pleas of Delaware County, to serve until the first Monday of January 1998, vice The Honorable Anthony R. Semeraro, deceased.

THOMAS J. RIDGE
Governor

On the question,

Will the Senate advise and consent to the nomination?

The yeas and nays were required by Senator LOEPER and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional two-thirds majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Governor be informed accordingly.

EXECUTIVE SESSION RISES

Senator LOEPER. Mr. President, I move that the Executive Session do now rise.

The motion was agreed to.

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 3**

**BILL REREPORTED FROM COMMITTEE
AS AMENDED ON THIRD CONSIDERATION
AND FINAL PASSAGE**

HB 2585 (Pr. No. 4294) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for the organization of the Pennsylvania Fish and Boat Commission; providing for use of credit and debit cards; providing for limitation on regulatory jurisdiction; prohibiting interference with lawful fishing and boating; and further providing for disabled veterans and for fish collecting activities.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart

Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

BILL AMENDED

HB 2186 (Pr. No. 4272) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for clarification of the status of members of the Fish and Boat Commission, its Boating Advisory Board and deputy waterways patrolmen; providing for a volunteer program; further providing for classification of offenses and penalties, for boating under the influence and for Class A regulated fishing lakes; and providing for marking of dams.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

RECONSIDERATION OF HB 2186

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator LOEPER.

Senator LOEPER. Mr. President, I move to reconsider the vote by which the bill was agreed to on third consideration.

The motion was agreed to.

And the question recurring,

Will the Senate agree to the bill on third consideration?

Senator STAPLETON offered the following amendment No. A8174:

Amend Sec. 4 (Sec. 3510), page 7, line 1, by removing the period after "DAYS" and inserting: , unless river conditions during that time make such repair or replacement dangerous to undertake or impracticable to effect in which case the permittee or owner shall repair or replace the signs or buoys as soon as is reasonably practicable.

On the question,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator LOEPER.

BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE

HB 2463 (Pr. No. 4236) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, defining "bodily injury," "facsimile," "poaching" and "serious bodily injury"; further defining "game," "hunt" or "hunting," "take" and "wildlife" to include facsimiles; further providing for the terms of commission members; providing for the use of facsimiles for law enforcement purposes, for the use of protective materials by officers and for an additional penalty for poaching; and further providing for incident reports and assistance, for increased penalties for shooting at, causing injury to or killing another person, for the use of lights while hunting, for carrying loaded firearms in certain vehicles, for safety zones by employees and agents of political subdivisions holding valid deer control permits, for the training of dogs, for restrictions on vehicles, for license revocation, for disabled hunting licenses and for taxidermy permits.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—50

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Stapleton
Armstrong	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bell	Holl	Peterson	Tartaglione
Bodack	Hughes	Piccola	Thompson
Brightbill	Jubelirer	Porterfield	Tilghman
Corman	Kasunic	Punt	Tomlinson
Costa	Kitchen	Rhoades	Uliana
Delp	LaValle	Robbins	Wagner
Fisher	Lemmond	Salvatore	Wenger
Fumo	Loeper	Schwartz	Williams
Gerlach	Madigan		

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 4BILL REREPORTED FROM COMMITTEE AS
AMENDED ON SECOND CONSIDERATION

HB 397 (Pr. No. 4292) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 7, 1982 (P. L. 784, No. 225), known as the Dog Law, further providing for preliminary mate-

rial, for licenses, tags and kennels, for dogs at large, for duties of officers, for duties of the department, for offenses, for dangerous dogs, for injuries to dogs, for damages by dogs, for statements and proofs and for enforcement and penalties; providing for sterilization of dogs and cats; further providing for funds, for liability of the Commonwealth, for applicability, for abandonment and for repeals.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILLS ON SECOND CONSIDERATION

HB 168 (Pr. No. 3374) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 24 (Education) and 71 (State Government) of the Pennsylvania Consolidated Statutes, providing for special supplemental postretirement adjustments.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

HB 2191 (Pr. No. 4271) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for supervision of child-care facilities; and conferring powers and duties on the Department of Public Welfare.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

HB 2586 (Pr. No. 4252) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of August 9, 1955 (P.L.323, No.130), known as The County Code, authorizing counties to make appropriations to municipal corporations for disaster or emergency aid.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

HB 2657 (Pr. No. 4158) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, requiring notice to be sent to certain taxpayers who fail to make timely payment of certain taxes.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 5

BILL ON SECOND CONSIDERATION AND REREFERRED

HB 497 (Pr. No. 3098) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further defining "emergency vehicle"; adding a defini-

tion of "issuing agent"; further providing for application for certificate of title by agent, for temporary registration cards, for suspension or revocation of vehicle business registration plates, for revocation or suspension of operating privilege, for insurance premiums, for reports by issuing authorities and for reports by courts; and making a repeal.

Considered the second time and agreed to,

Ordered, To be printed for third consideration.

Upon motion of Senator LOEPER, and agreed to, the bill just considered was rereferred to the Committee on Appropriations.

BILLS ON SECOND CONSIDERATION

HB 1182 (Pr. No. 3561) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, authorizing police officers to record certain oral communications; providing for authority to purchase surveillance devices; and providing for windshield obstructions and wipers.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

HB 2379 (Pr. No. 3562) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for credit card fraud; defining the offense of unlawful device-making equipment; and providing penalties.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

THIRD CONSIDERATION CALENDAR RESUMED

HB 2118 CALLED UP

HB 2118 (Pr. No. 3053) -- Without objection, the bill, which previously went over in its order temporarily, was called up, from page 5 of the Third Consideration Calendar, by Senator LOEPER.

BILL OVER IN ORDER

HB 2118 (Pr. No. 3053) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for criminal mischief.

On the question,

Will the Senate agree to the bill on third consideration?

Senator RHOADES offered the following amendment No. A8049:

Amend Title, page 1, line 3, by removing the period after "mischief" and inserting: ; and providing for a Statewide ballot question relating to limited electronic gaming.

Amend Bill, page 2, line 6, by striking out all of said line and inserting:

Section 2. (a) The Secretary of the Commonwealth shall cause to be placed on the ballot, at the primary or general election next following the effective date of this section, a referendum to determine the will of the electorate of the Commonwealth with respect to the passage of a Limited Electronic Gaming Act. The referendum shall be advertised and conducted in accordance with the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(b) The question shall be in substantially the following form: Shall Pennsylvania expand the State Lottery through the licensing and regulation of limited electronic gaming in certain liquor-licensed establishments in order to provide additional funding for senior citizens' programs, local school districts, colleges, universities, municipal government operations and county government operations?

Section 3. This act shall take effect as follows:

(1) Section 2 of this act and this section shall take effect immediately.

(2) The amendment of 18 Pa.C.S. § 3304 shall take effect in 60 days.

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Mr. President, the amendment I propose to House Bill No. 2118 would place a referendum question on the statewide ballot. The outcome of the vote on that question will determine whether Pennsylvanians approve limited electronic gaming in Pennsylvania and approve the use of the funds derived from this enterprise for senior citizens, local schools, colleges, universities, and local and county governments.

The Governor has made clear that the people of this Commonwealth must approve the concept of limited electronic gaming before the General Assembly begins discussion on the specifics of any legislative proposal. This is exactly what this amendment proposes to do. Here is how the amendment question will read: "Shall Pennsylvania expand the State Lottery through the licensing and regulation of limited electronic gaming in certain liquor-licensed establishments in order to provide additional funding for senior citizens' programs, local school districts, colleges, universities, municipal government operations and county government operations?" I believe this makes our intentions clear.

Consistent with the Governor's recommendation, this amendment does not include the details of limited electronic gaming legislation. However, I would like to take this opportunity to share some of the elements of the proposal I and many others support. I think we can say that we believe that electronic gaming machines must be closely monitored by a Commonwealth department or commission. Electronic gaming machines must be limited in number. Electronic gaming machines must be limited to liquor-licensed establishments. Revenues from electronic gaming devices must be targeted to the programs that enjoy wide support from all Pennsylvanians, and these would include programs for senior citizens, our local schools, colleges, universities, local and county governments. We will regulate electronic gaming as an expansion of the State Lottery, and we will ensure that the revenues the Com-

monwealth realizes from this venture are dedicated to critical State and local programs.

Another proposal that is crafted this Session, conservative estimates of revenue the Commonwealth would realize from limited electronic gaming exceed \$500 million per year. That is right, \$500 million per year. My friends, the list of programs that need additional State dollars is virtually endless, but I think we can agree that senior citizen programs are always in need of additional funding. As a matter of fact, we just passed the PACE program last week. We know what they need and they will continue to need more. I think we can agree that our local schools are starving for resources. I believe we all understand that colleges and universities in this Commonwealth are funded among the lowest of any State in the union. And I think we can all assume and presume that the local and county governments we represent face the same problems as we do in each of our districts - the need to provide more services with less money each year.

As legislators we face tough choices each year on June 30. We decide which of these gaps can be filled by the very limited pool of available State dollars. In recent years this already limited pool of available funds has been further reduced. I fear that expanding government obligations and shrinking revenues will shrink it even further. In this environment, \$500 million will go a long way toward funding programs for senior citizens, education, both basic and higher, and local and county governments. Five hundred million dollars will fund programs that might otherwise face drastic future reductions.

Of course, it will be our responsibility to work out these details if the people approve this referendum. However, if the question I propose is placed on a statewide ballot and approved by the electorate, Pennsylvanians will have sent a clear message to us here in the General Assembly. Our objective will be to provide new funding for programs for senior citizens, local schools, colleges, universities, local governments, and county governments. Our mandate will be to establish limited electronic gaming through a controlled expansion of our State Lottery, and our responsibility will be to ensure that limited electronic gaming is well regulated and closely monitored all across this Commonwealth. I encourage you to support this amendment and let the people decide what direction the General Assembly should take on this expansion of the State Lottery.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Cambria, Senator Stewart.

Senator STEWART. Mr. President, I rise to support the Rhoades amendment, and I ask my colleagues to do the same. The gentleman from Schuylkill, Senator Rhoades, and myself and many others in this Senate have been working to try to legalize electronic video gaming for quite some time. In fact, in 1990, this Senate and the House passed an electronic video gaming bill and when it got to Governor Casey's desk he vetoed it. We were surprised. He had not indicated prior to that moment that he had any interest whatsoever, and maybe it was our fault for not involving the Governor in that loop. This amendment, however, attempts to involve the Governor this

time in the loop. He has made it very clear, and it is his prerogative, that he wants a statewide referendum on this issue. That is what this amendment does. That is what we are trying to do in this amendment, and I would ask for an affirmative vote.

The PRESIDENT. The Chair recognizes the gentleman from Blair, Senator Jubelirer.

The PRESIDENT pro tempore. Mr. President, I rise in opposition to this amendment. I recognize that this is certainly one of the issues that transcends partisanship and party line, and one that each Member in his own or her own district has to evaluate as to whether indeed the promises that are suggested by those not only just here in this body but those who have promoted gambling over the years, whether those promises are real and we have this idea of a so-called free lunch, or whether it comes with a far greater price for Pennsylvania's citizens to pay.

Mr. President, I have never believed that the answer to Pennsylvania's fiscal problems were to be solved by any kind of an extension of gambling to that which we have in the Commonwealth today. I have read many articles. I have been very much involved in the issue. Some years ago when we got involved in the issue I had the opportunity to attend a Gamblers' Anonymous meeting here in the city of Harrisburg, and I can tell you, Mr. President, without a doubt, there is no difference from those who are addicted to gambling than those who are addicted to alcohol or drugs.

It is a serious problem, Mr. President, and it is one that I do not believe this Commonwealth should move to. We are talking about video poker machines, a lot of video poker machines, that are going to be placed in bars across this Commonwealth. Sure, the answer is, well, we are going to do this for senior citizens and we are going to do that for education and this for colleges and that for basic education, and frankly, Mr. President, I believe that we are misguided if we are to suggest that is the way we are to do our funding.

I speak for myself. I believe I speak for the majority of the people in my district who would say that the extension of gambling is not the answer. It brings about a great deal more problems. We have seen it in other States. We have had the opportunity to see what has happened in other States that have either turned down referendums or have accepted the gambling and then have rejected it at a later time because of the problems that it brings. It brings a lot of social problems, Mr. President. Problems that have to be dealt with, problems that will be costly, problems that are going to increase welfare rolls, problems that are going to increase our hospitals, problems that are going to increase difficulties to families. As families break up, as families have trouble making ends meet, the sure hit is the way to solve their problems, as those who have been taken into the addiction have found out all too often.

Mr. President, I stand here before the Members of this Senate some 5 minutes before midnight on the day before we are to adjourn sine die, and I beseech the Members of this body not to fall for the kind of promises that are being made by those who stand to make a great deal of money outside this body, who lobby this body, who intend to pursue the weak-

nesses of people in order to promote themselves. Those who make the money, Mr. President, are not the taxpayers of the Commonwealth of Pennsylvania. They are individuals, and there is a heck of a lot of money to be made out there, let me tell you.

As I said, I have spent a great deal of time and read a great deal and I come here not with prepared statistics, because that day may come in the future, but I come here because I believe from the bottom of my heart that this great pristine Commonwealth of Pennsylvania, a Commonwealth of greatness, a Commonwealth that can do better than to deal with the false promises of gambling in this State can do better. We have to do better. We have to do better with our schools and we have to do better with our senior citizens, but we do not do that when we take the easy way out and say, well, video poker is the answer or riverboat gambling is the answer. I do not believe that is the case.

And let me tell you, every Member of this Senate knows that the moment that we accede to video poker there is another step, and that step would eventually lead up to casino gambling in this Commonwealth, and I think that is wrong. And when I hear the argument that people just go to Atlantic City and spend their money there, fine, let them go and let them see what Atlantic City has to offer outside the few blocks of those casinos, see the seediness, the loan sharking, and the prostitution that goes with it. There is a lot to be desired in Pennsylvania, but I do not believe that this is one of them.

I sincerely believe, Mr. President, that the people of my district certainly do not want that, and I do not believe that the people of Pennsylvania do. There will be the argument that, well, let us just see how they feel and we will put it on a ballot and see how the people react. Well, Mr. President, you will see the largest amount of money infused, more than any political election that we have had in this Commonwealth, because the interests who stand to gain the most will spend the kind of money that it will take to try to pass it, and I do not want to see that happen in this State, and I would hope that the Members of this body would put a quick end to this tonight, once and for all, at least for now, and send a message loud and clear that the people of Pennsylvania can do better.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from York, Senator Delp.

Senator DELP. Mr. President, I rise also in opposition to this amendment, and I am kind of glad I had the opportunity to follow the gentleman from Blair, Senator Jubelirer, because I have some of the statistics. But before I get into the statistics I would like to read one paragraph that just appeared in The Patriot News this past Sunday, the very last paragraph, and it is on whether or not we should boldly go where no other State has gone before in terms of electronic gaming.

They write: "Only after a thorough and credible study on legalized gaming has been performed will it be possible to hold an informed and meaningful debate on the issue. Only with such a study will the public and lawmakers be able to decide wisely whether or not expanded legalized gambling is right for Pennsylvania." We have done no such study. We have

had no statewide hearings. We are really not prepared, I do not think, as a body today to discuss this issue in detail, let alone to throw the issue out to a statewide referendum to our constituents. What do they know? What do they know about gambling?

I have taken it upon myself, and I have accumulated some data and some statistics on what gambling has done to communities across the United States. Let me read some statistics for you. First of all, quote, "Video poker is the crack cocaine of gambling." This is according to Valerie Lorenz, head of a Maryland compulsive gambling group. She goes on, "It is highly addictive, most potent, powerful form of gambling due to its instant gratification, instant payoffs and non-stop unlike other forms of gambling that have time lapses and are not continuous." We are talking about 17,000 locations in the Commonwealth of Pennsylvania that would be able to have video gaming if this were to pass.

I have a whole study here that was prepared by the Attorney General of Maryland, and it was his report to the Joint Executive-Legislative Task Force in Maryland to discuss gaming, and I will read just one page about what occurred in Biloxi. (*Reading*):

Biloxi's first three casinos opened in August, 1992.

The Biloxi police department has had to create new specialized units for drunken driving, drug distribution, and traffic to cope with the growth in these areas.

Divorces increased 250% in Harrison County in the first two years of casino gaming.

Suicide attempts skyrocketed 1100% in the first year of casinos, going from 6 to 66.

State social workers investigated 15 reports of child neglect, where children were left in cars or home alone while parents gambled. In one case, four children were left for nine hours in a car with no food or water.

Prostitution has increased by 55%...

These are the exact statistics that Senator Jubelirer was referring to. There are ills that go along with this. And you want to know who is also the victim? It is Joe Lunchbox. Who is standing up for Joe Lunchbox now? Well, it is Senator Jubelirer and Senator Delp. I hope all the folks on the other side of the aisle who were talking about Joe Lunchbox all night long eagerly support the defeat of this amendment, because it is the people who can ill afford to lose the money the most that stand to lose it if we approve gambling across the Commonwealth of Pennsylvania.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Afflerbach.

Senator AFFLERBACH. Mr. President, I would merely observe that the gentleman from Schuylkill, Senator Rhoades, is offering an amendment to authorize certain limited electronic gaming, which is a rather broad definition, to a bill which is described as further providing for criminal mischief. How ap-
ropos.

The PRESIDENT. The Chair recognizes the gentleman from Lancaster, Senator Armstrong.

Senator ARMSTRONG. Mr. President, I would like to interrogate the gentleman from Schuylkill, Senator Rhoades, on the amendment, please.

The PRESIDENT. Will the gentleman stand for interrogation?

Senator RHOADES. Yes, Mr. President.

The PRESIDENT. Senator Armstrong, go ahead.

Senator ARMSTRONG. Mr. President, just one brief question. The gentleman's amendment deals with the gaming establishments in licensed liquor establishments, is that correct?

Senator RHOADES. Mr. President, yes.

Senator ARMSTRONG. Mr. President, and those establishments only?

Senator RHOADES. Mr. President, that is all.

Senator ARMSTRONG. Mr. President, okay. That is the end of the interrogation.

Liquor and gambling, with those two we are going to help our families, we are going to help our children. What a shame. What a shame.

The PRESIDENT. The Chair recognizes the gentleman from Schuylkill, Senator Rhoades.

Senator RHOADES. Mr. President, I do not know, I guess some who do not want this all of a sudden say that this is a panacea. There is no panacea in this, but let me remind you, it was this same body that approved racetracks, the Lottery, the Daily Lottery, the Cash 5, the Tuesday Lotto, the Keystone Bingo, and, oh, yes, the \$1.3 billion industry of small games of chance. So before we start rolling around how bad this is or is not, take a look at what you have done, and maybe you want to undo what has been.

Another thing, I want to tell you what, folks, if you want to hide your eyes or anything else to it and say there are no video poker machines around, wake up, because they are there. They are there illegally and they should be taken out of there. But people must be playing them because they have to be making money on them. And if that is the case, either take them out or else let us regulate them and control them so that it is done and there is an accounting that is done on them and it is proper accounting. The way we propose it, it would be just like the lotto, a direct-line cable from that machine right into Harrisburg here and the first quarter that goes in is registered and it stays there. There will be no false accounting, no funny parts, no misappropriation of the funds as far as it goes.

As for what is going to be done, where it is going to come, that is what we have to determine. We have proposed ideas, but the Governor said, no, he wants first of all the referendum. So there could be a number of different ideas that could be placed before the people and discussed. The object is, do we want to consider this? And if we do, limit it within bars, 21 years or older, they are the only ones who are supposed to be there, and limit the amount that they can play. Now, how much and who is going to make the money? That is yet to be determined. We have not said we propose 33-33-33 percent. In Oregon or Washington, they take 66 percent of the pot. Of course they administer it through the State and so they spend 43 percent in wages, overhead, and everything else so they

only realize about 24 percent. And these are things that we have to look at and talk about.

Is it an answer to money for basic education? I am glad so many people are concerned tonight that this is not the answer. I wait for June 30 when we are going to put the right kind of money back into basic education so that we do not have to look at these kinds of things, so we do not have to worry about these kinds of things, so we do not have to try to find \$62 million to try to fix a roof in the State college system or the same with the community colleges. I do not like it, but if it is a means and a method, somebody better start doing something about it. That is a chance.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Cambria, Senator Stewart.

Senator STEWART. Mr. President, I truly respect the remarks of Senator Jubelirer and Senator Delp on this issue. It is a very difficult social issue, but I cannot let the record stand without saying that just last week every Member of this Senate was tripping over themselves to spend gambling money on senior citizens, tripping over themselves. There was a press conference out here, a press conference back there, a press conference over there on how to spend gambling money on senior citizens.

Sure, there are problems. There are problems with the Lottery. We are not addressing those. As the gentleman from Schuylkill, Senator Rhoades, said, this activity is occurring. The least we can do is make it legal and regulate it and direct some of the money to programs that are in dire need of it. I urge an affirmative vote.

Thank you, Mr. President.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request temporary Capitol leaves for Senator Bodack, Senator Fumo, and Senator Williams.

The PRESIDENT. Without objection, those leaves are granted.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were required by Senator RHOADES and were as follows, viz:

YEAS—22

Andrezeski	Fumo	Musto	Stapleton
Belan	Kasunic	Porterfield	Stewart
Bell	Kitchen	Punt	Tartaglione
Bodack	LaValle	Rhoades	Tomlinson
Corman	Loeper	Salvatore	Wagner
Costa	Mellow		

NAYS—28

Afflerbach	Hart	Madigan	Shaffer
Armstrong	Heckler	Mowery	Stout
Brightbill	Helfrich	O'Pake	Thompson

Delp	Holl	Peterson	Tilghman
Fisher	Hughes	Piccola	Uliana
Gerlach	Jubelirer	Robbins	Wenger
Greenleaf	Lemmond	Schwartz	Williams

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate agree to the bill on third consideration?

Senator TOMLINSON offered the following amendment No. A8257:

Amend Title, page 1, line 3, by removing the period after "mis-chief" and inserting: ; authorizing and regulating racetrack gaming devices; and establishing the State Gaming Device Fund.

Amend Bill, page 2, line 6, by striking out all of said line and inserting:

Section 2. Chapter 71 of Title 18 is amended by adding a subchapter heading and subchapter to read:

CHAPTER 71

SPORTS AND AMUSEMENTS

SUBCHAPTER A

GENERAL PROVISIONS

SUBCHAPTER H

RACETRACK GAMING DEVICES

Sec.

7181. Definitions.

7182. Application of other provisions of this subchapter.

7183. Appointment of management personnel.

7184. Regulations.

7185. Gaming device license.

7186. Supplier License.

7187. Occupation permit.

7188. Other license and permits.

7189. Exclusion or ejection of certain persons by the appropriate commission.

7190. Suspension or refusal to issue or renew license.

7191. Internal control systems and internal audits.

7192. Gaming device tax and State Gaming Device Fund.

7193. State license fee.

7194. Additional revenue disbursements.

7195. Statewide Racetrack Gaming Device Referendum.

7196. Construction of chapter.

§ 7181. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Associated equipment." Any equipment or mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming or with any game that would not otherwise be classified as a gaming device, including links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems for monitoring gaming devices and devices for weighing or counting money.

"Fund." The State Gaming Device Fund established under section 7192 (relating to gaming device tax and State Gaming Device Fund).

"Gaming." All activities concerning the ownership and operation of gaming devices but excluding any activities concerning the operation or conducting of racing or pari-mutuel wagering.

"Gaming device." This term shall mean:

(1) Any mechanical, electromechanical or electronic contrivance used in connection with gaming or any game which affects the result of a wager by determining win or loss.

(2) Any machine that is part of a network of linked machines with an aggregate progression prize or prizes.

(3) Any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options available to the player, are randomly and immediately determined by the machine.

"Gaming device licensee." A corporation licensed under the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act, that meets all of the following criteria:

(1) Has directly or by its predecessor in interest conducted live horse racing for the two years immediately preceding the enactment of this subchapter.

(2) Has received a gaming device license under this subchapter.

(3) Continues directly or by its successor in interest to provide for live horse racing after receipt of the gaming device license.

"Gaming employee." Any employee, including, but not limited to:

- (1) Cashiers.
- (2) Change personnel.
- (3) Counting room personnel.
- (4) Floormen.
- (5) Hosts or other persons empowered to extend credit or complimentary services.
- (6) Machine mechanics.
- (7) Security personnel.
- (8) Supervisors or managers.

The term also includes employees of a person holding a supplier's license whose duties are directly involved with manufacture, repair or distribution of gaming devices in this Commonwealth. The term does not include bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverage, secretarial personnel, janitorial, stage, sound and light technicians and other nongaming personnel.

"Gross revenue." The total of cash or cash equivalents received by a gaming device and cash received in payment for credit extended by a gaming device licensee to a patron for the purpose of playing a gaming device minus the total of:

(1) Cash or the cash equivalent paid out to patrons as a result of playing a gaming device.

(2) Cash paid to purchase annuities to fund cash paid to patrons over several years by independent administrators as a result of playing a gaming device.

(3) The value of any personal property distributed to a patron as the result of playing a gaming device but not travel expenses, food, refreshments, lodging or services. The term "gross revenue" does not include counterfeit money or tokens, coins of other countries which are received in gaming devices, except to the extent that they are readily convertible to United States currency, cash taken in fraudulent acts perpetrated against a gaming device licensee for which the licensee is not reimbursed or cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

"Person." A natural person, corporation, organization, business trust, estate, trust, partnership, association and any other legal entity.

"Progressive jackpot." A prize that increases as one or more gaming devices are connected to a progressive system.

"Progressive system." A computerized system linking gaming devices in one or more licensed establishments and offering one or more common progressive jackpots.

"Supplier." A person who manufactures, assembles, produces, programs, sells, leases, markets, offers or otherwise produces, distributes or makes modifications to any gaming device for use or play in this Commonwealth.

§ 7182. Application of other provisions of this subchapter.

Unless otherwise restricted by this subchapter, the general jurisdiction and general powers conferred upon the State Horse Racing Commission and the State Harness Racing Commission under current applicable statutes and under any other provision of this subchapter shall apply to the gaming activities conducted by the licensed corporations granted a gaming device license, gaming device suppliers, gaming employees and any other person who receives a license or approval to participate in the activities provided for under this sub-

chapter from the appropriate commission granting the license or approval.

§ 7183. Appointment of management personnel.

(a) Appointment.—The Secretary of Agriculture shall appoint, with the approval of the Governor, three individual persons who shall be designated and whose experience, qualifications and duties performed concurrently for both commissions shall be as set forth in subsections (b), (c) and (d).

(b) Executive Director qualifications.—The Executive Director for Gaming Activities shall be a person who has a minimum of five years of responsible administrative experience in public or business administration, possesses broad management skills and devotes full time and attention exclusively to gaming activities and the duties imposed by virtue of the appointment. The Executive Director of Gaming Activities shall not pursue any other business or occupation or hold any other office for profit.

(c) Gaming Activities Auditor.—The Gaming Activities Auditor shall be a certified public accountant licensed to practice in this Commonwealth whose duties shall be those exclusively related to gaming activities.

(d) Gaming Activities Security and Enforcement Officer.—The Gaming Activities Security and Enforcement Officer shall possess substantial experience of a senior nature in law enforcement whose duties shall be those exclusively related to gaming activities.

(e) Duties.—The Executive Director of Gaming Activities, the Gaming Activities Auditor and the Gaming Activities Security and Enforcement Officer shall:

(1) Perform duties which are exclusively related to the gaming activities authorized by both commissions and imposed and assigned to them by the Secretary of Agriculture.

(2) Receive salaries fixed by the Secretary of Agriculture.

(3) Serve at the pleasure of the Secretary of Agriculture.

(4) Not be public officers or party officers as defined under section 211 of the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act.

(5) Not have any interest, pecuniarily or otherwise, in any business in connection with any person who may be required to be licensed or approved under this subchapter.

(6) Attend all regular and special meetings scheduled by the commissions.

(f) Notice of meetings.—The State Horse Racing Commission and the State Harness Racing Commission shall notify the Executive Director for Gaming Activities, the Gaming Activities Auditor and the Gaming Activities Security and Enforcement Officer of all regular and special meetings and seek their advice and comments in matters related to gaming activities within the purview of the duties imposed and assigned to them by the Secretary of Agriculture.

Section 7184. Regulations.

The State Horse Racing Commission and the State Harness Racing Commission shall, from time to time, promulgate, amend or rescind regulations consistent with the policy, object and purpose of this subchapter, as they may deem necessary or desirable in the public interest in carrying out the policy and provisions of this subchapter. Each commission to the extent possible shall adopt regulations which are compatible with the regulations of the other commission.

§ 7185. Gaming device license.

(a) License required.—Any licensed corporation that desires to install gaming devices within its primary racetrack enclosure shall apply to the appropriate commission for a gaming device license.

(b) Application contents.—The application for a gaming device license shall include, but not be limited to:

(1) The name of the licensed corporation or its predecessor applying for the license.

(2) The length of time and the dates upon which the licensed corporation or its predecessor has conducted live racing at its primary racetrack enclosure.

(3) The number and type of gaming devices to be installed and operated, not to exceed a maximum of 3,000 gaming devices per racetrack.

(4) The names of all persons directly or indirectly having an ownership interest in the gaming device license and the nature of that ownership interest.

(5) Any other information and details the appropriate commission may require.

(c) Criteria.—

(1) A licensed corporation that the appropriate commission determines is qualified to receive a license under the provisions of this subchapter may be issued a license.

(2) A gaming device license shall not be granted unless the appropriate commission finds that the licensed corporation has satisfied all of the following criteria:

(i) Conducted directly or by its predecessor live racing at its primary racetrack enclosure for a period of at least two years immediately preceding the enactment of this subchapter.

(ii) Demonstrated its integrity and honesty in the operation of its pari-mutuel business.

(iii) Has adequate business probity, competence and experience in either gaming or wagering operations.

(iv) Has adequate financing available for the proper installation, operation and maintenance of the gaming devices.

(d) Gaming device requirement.—A machine may use spinning reels or video displays or both and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a gaming device notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary. No gaming device shall be set to pay out less than 87% or more than 95% of all wagers on an average annual basis.

(e) Permission to operate gaming devices.—

(1) Each commission shall upon request by a licensed corporation that has obtained a gaming device license pursuant to section 7185, grant permission to operate gaming devices within its racetrack enclosure. Such permission to operate gaming devices shall be limited to those gaming device licensees:

(i) That have a written live racing agreement with a horsemen's organization representing a majority of owners and trainers at the racetrack where the licensed corporation conducts racing dates.

(ii) That have scheduled 95% of the total number of horses or harness racing days scheduled in 1986 by it or its predecessor at the racetrack where the licensed corporation conducts racing dates.

(iii) That, subject to actions or activities beyond the control of the licensee, conduct not less than eight live races per race date during each meet at the racetrack where the licensed corporation conducts racing dates, except for thoroughbred tracks on the day designated as Breeders' Cup Event Day, when the racetrack shall hold a minimum of five live races.

The horsemen's organizations representing a majority of owners and trainers at a racetrack may consent to waiving or modifying the provisions pertaining to the required number of racing days and races per day scheduled by the licensed corporation at that racetrack.

(2) Permission for any gaming device licensee to operate gaming devices under this subchapter shall be granted if a written live racing agreement has not been entered into provided all of the following conditions are satisfied:

(i) That the gaming device licensee conducts live racing at its racetrack in accordance with paragraph (1)(ii) and (iii) of this subsection.

(ii) That the licensed corporation keeps its racetrack open to the general population of owners, trainers and horses currently stabled there for training and stabling of horses on a regular basis during the periods of time when it is normally open for live racing.

(iii) That the licensed corporation pays as purses during such period that a live racing agreement has not been entered into the applicable statutory percentages of the licensed corporation's retention of moneys from pari-mutuel pools or, if the percentages are not mandated by statute, to pay as purses 50% of the licensed

corporation's retention of moneys from pari-mutuel pools plus the applicable purse revenue for operating a gaming device license under section 7194 (relating to additional revenue disbursements).

§ 7186. Supplier license.

(a) Application.—Any person that desires to supply gaming devices or associated equipment to a gaming device licensee shall apply to the appropriate commission for a supplier license.

(b) Contents.—The application for a supplier license shall include, but not be limited to:

(1) The name and business address of the person.

(2) The length of time the person has been in the business related to the application.

(3) The background and financial standing of the person.

(4) Details of any supplier license granted by other jurisdictions where gaming is legal.

(5) The type of goods and services to be supplied.

(6) Any other information and details the appropriate commission may require.

(c) Criteria.—

(1) Any supplier that the appropriate commission determines to be qualified to receive a supplier license under the provisions of this subchapter may be issued a supplier license.

(2) A supplier license shall not be granted unless the commission finds that the applicant satisfies all of the following criteria:

(i) The applicant is a person of good character, honesty and integrity.

(ii) The applicant is a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the gaming business of a supplier of gaming devices and financial arrangements incidental to it.

(iii) The applicant in all other respects is qualified to be licensed or found suitable consistent with the laws of this Commonwealth.

§ 7187. Occupation permit.

(a) Application.—Any person who desires to be a gaming employee shall apply to the appropriate commission for an occupation permit. A person may not be employed as a gaming employee unless the person holds an appropriate occupation permit issued under this chapter.

(b) Contents.—The application for an occupation permit shall include, but not be limited to:

(1) The name and home address of the person.

(2) The previous employment history of the person.

(3) Any criminal record of the person.

(4) The nature and scope of the proposed duties of the person.

(5) Any other information and details the commission may require.

(c) Criteria.—

(1) Any person that the commission determines to be qualified to receive an occupation permit under the provisions of this subchapter may be issued a permit.

(2) A permit shall not be granted unless the commission finds that the applicant satisfies all of the following criteria:

(i) The applicant is a person of good character, honesty and integrity.

(ii) The applicant is a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the gaming business and financial arrangements incidental to it.

(iii) The applicant is in all other respects qualified to be licensed or found suitable consistent with the laws of this Commonwealth.

§ 7188. Other licenses and permits.

(a) **Determination.**—The State Horse Racing Commission and the State Harness Racing Commission may determine the suitability of any person who furnishes services or property to a gaming device licensee under any arrangements under which that person receives payments based directly or indirectly on earnings, profits or receipts from gaming. The appropriate commission may require any person to comply with the requirements of this subchapter and the regulations of the commission.

(b) **Additional licensees.**—The appropriate commission may require any person who is associated with a gaming device licensee to apply for a license if that person satisfies any one of the following criteria:

(1) The person does business on the premises at which gaming devices are operated, but not including persons involved exclusively in racing or pari-mutuel wagering.

(2) The person does business with a gaming device licensee as a ticket purveyor, a tour operator, the operator of a bus program or as the operator of any other type of travel program or promotion.

(3) The person provides any goods or services to a gaming device licensee for a compensation which the appropriate commission finds to be disproportionate to the value of the goods or services.

(c) **Written agreement.**—Any agreement which entitles a person to conduct business with a gaming device licensee is subject to the approval by the appropriate commission. Every agreement shall be in writing and include a provision for its termination without liability on the part of the gaming device licensee upon a finding by the appropriate commission that the agreement is not approved or that it is terminated. Failure to expressly include this condition in the agreement is not a defense in any action brought under this section to terminate the agreement.

§ 7189. Exclusion or ejection of certain persons by the appropriate commission.

(a) **Establishment of list.**—The State Horse Racing Commission and the State Harness Racing Commission shall by regulation provide for the establishment of a list of persons who are to be excluded or ejected from a gaming device licensee's gaming establishment. The list may include any person whose presence in the establishment is determined by the appropriate commission to pose a threat to the public interest or to licensed gaming, or both.

(b) **Considerations.**—In making any determination under this section, the commission may consider any:

(1) Prior conviction of a crime which is a felony under Federal or State law, a crime involving moral turpitude or a violation of the gaming laws of any jurisdiction.

(2) Violation or conspiracy to violate the provisions of this subchapter relating to the failure to disclose an interest in a gaming establishment for which the person must obtain a license or approval or willful evasion of fees or taxes.

(3) Notorious or unsavory reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements.

(4) Written orders of any other governmental agency which authorizes the exclusion or ejection of the person from an establishment at which gaming or pari-mutuel wagering is conducted.

§ 7190. Suspension or refusal to issue or renew license.

(a) **Determination.**—In addition to the reasons set forth under this subchapter and section 213 of the act of December 17, 1981 (P.L.436, No.137), known as the Race Horse Industry Reform Act, for the refusal by the appropriate commission to issue a license, suspend, refuse to renew or revoke any license or approval issued under section 213 of the Race Horse Industry Reform Act, the State Horse Racing Commission and the State Harness Racing Commission shall refuse to issue a license and may suspend, refuse to renew or revoke a license or approval issued under this section if that commission determines that the applicant or licensee or person seeking or having obtained approval meets any of the following conditions:

(1) Is guilty of any fraud in connection with gaming.

(2) Is guilty of any violation or attempt to violate any law, rule or regulation of any jurisdiction for which suspension from any gaming activity might be imposed in that jurisdiction.

(3) The experience, character or general fitness of any applicant or licensee is such that the participation of that person in gaming activities or related activities provided for under this subchapter is inconsistent with the public interest, convenience or necessity or with the best interest of gaming activities.

(b) **Hearing.**—If either commission refuses to grant any license or approval applied for under this subchapter or revokes or suspends any license or approval granted, the applicant or licensee may demand a hearing under section 226 of the Race Horse Industry Reform Act. § 7191. Internal control systems and internal audits.

(a) **Procedures.**—Each gaming device licensee and each applicant for a gaming device license shall describe, in the manner the appropriate commission may approve or require, its administrative and accounting procedures in detail in a written system of internal control. Each gaming device licensee and applicant for a gaming device license shall submit a copy of its written system to the appropriate commission. Each written system shall include:

(1) An organizational chart depicting appropriate segregation of functions and responsibilities.

(2) A description of the duties and responsibilities of each position shown on the organizational chart.

(3) A detailed narrative description of the administrative and accounting procedures.

(4) A written statement signed by the gaming device licensee's chief financial officer and the gaming device licensee's chief executive officer attesting that the system satisfies the requirements of this section.

(5) If the written system is submitted by an applicant, a letter from a certified public accountant stating that the applicant's written system has been reviewed by the accountant and complies with the requirements of this section.

(6) Any other items as the appropriate commission may require.

(d) **Regulations.**—The commission shall adopt and publish minimum standards for internal control procedures.

§ 7192. Gaming device tax and State Gaming Device Fund.

(a) **Fund established.**—There is hereby established the State Gaming Device Fund.

(b) **Tax rate.**—All gaming device licensees shall pay a tax in the amount of 25% of the gross revenue arising from the operation of the gaming device licensees gaming devices.

(c) **Payment of tax.**—The tax imposed by this section shall be paid by the gaming device licensee through the Department of Revenue for credit to the State Gaming Device Fund monthly on or before the 20th day of the month next succeeding the month in which the tax accrues and in the manner prescribed by the regulations of the appropriate commission.

(d) **Tax distribution.**—The commissions shall distribute moneys from the State Gaming Device Fund, together with the interest earned thereon, at least once annually on September 1, 1997, and each September 1 thereafter to the State Treasurer for deposit in the following manner:

(i) Seventy percent shall be directed to funding public education programs in all 501 school districts of the Commonwealth. Each school district should receive the same proportional distribution of the proceeds of this fund as it presently receives through the basic education funding as set forth in section 2502.31 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(ii) All funds distributed under subparagraph (i) shall be in addition and not a replacement for any appropriations made pursuant to section 2502.31 of the Public School Code of 1949 in each annual general appropriations act.

(2) Fifteen percent shall be transferred to the Department of Community and Economic Development for stadium and exposition facilities.

(3) Five percent shall be transferred to the Agricultural Conservation Easement Purchase Fund.

(4) Five percent shall be distributed to each qualified county based upon the track's percentage of contribution to the fund. A qualified county shall be the county where the facility at which the gaming device licensee schedules live horse racing is located. If the facility is located in two or more counties, the amount available shall be distributed on a pro rata basis determined by the percentage of acreage located in each county to the total acreage in all counties occupied by the facility.

(5) Two and one-half percent balance shall be distributed to each qualified municipality based upon the tracks percentage of contribution to the fund. A qualified municipality shall be the municipality where the facility at which the gaming device licensee schedules live horse racing is located. If the facility is located in two or more municipalities, the amount available for distribution based on that facility shall be distributed on a pro rata basis determined by the percentage of acreage located in each municipality to the total acreage in all municipalities occupied by the facility.

(6) Two and one-half percent shall be distributed equally to each qualified school district based upon the track's percentage of contribution to the fund. A qualified school district shall be the school district where the facility at which the gaming device licensee schedules live horse racing is located. If the facility is located in two or more school districts, the amount available for distribution based on that facility shall be distributed on a pro rata basis determined by the percentage of acreage located in each school district to the total acreage in all school districts occupied by the facility.

(e) If the amount of tax required to be reported and paid pursuant to this section is later determined to be greater or less than the amount actually reported and paid by the gaming device licensee, the commission shall:

(1) assess and collect the additional tax determined to be due with interest thereon until paid; or

(2) provide for a refund of any overpayment, with interest thereon, to the gaming device licensee.

§ 7193. State license fee.

Each gaming device licensee shall annually pay to the Commonwealth a machine license fee of \$100 per machine. The license fee shall be deposited into a restricted receipts account to be annually appropriated by the General Assembly for programs to provide treatment to compulsive gamblers.

§ 7194. Additional revenue disbursements.

Each gaming licensee after the monthly payment of the gaming device tax shall distribute from the balance of the monthly gross revenues arising from the operation of the gaming devices of that licensee the following amounts:

(1) Fourteen percent to be used as additional moneys to fund the purses for the live races at the primary racetrack; of this 14%, \$500,000 to be paid annually to the thoroughbred jockeys' organization representing a majority of the thoroughbred jockeys at the thoroughbred primary racetrack for the purpose of providing health insurance, life insurance and benefits to thoroughbred jockeys who are disabled in accordance with reasonable rules for eligibility for such benefits.

(2) Two percent to be paid to the appropriate thoroughbred or harness breeders fund.

§ 7195. Statewide Racetrack Gaming Device Referendum.

(a) Legislative intent.—The General Assembly believes that a Statewide nonbinding referendum on the above principles will maximize public involvement in the consideration of the issue.

(b) Authorization.—The Secretary of the Commonwealth shall cause to be placed on the ballot, at the next primary, municipal or general election occurring at least 60 days next following the effective date of this section, a nonbinding referendum to determine the will of the electorate of this Commonwealth with respect to the establishment of a limited system of gaming devices at the four primary racetrack enclosures in Pennsylvania.

(c) Form of question.—The referendum shall be in substantially the following form:

As has been done in neighboring states, do you favor authorizing slot machines located in Pennsylvania with the following qualifications:

(1) Slot machines would be restricted to the four primary racetrack enclosures in Pennsylvania.

(2) Moneys shall be used for live racing, breeding of horses and preserving 35,000 jobs.

(3) Gaming activities would be taxed by the State and used for Statewide public education and economic development?

(d) Conduct of election.—The referendum shall be advertised and conducted in accordance with the provisions of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(e) Definition.—As used in this section, the term "primary racetrack enclosure" shall only include the actual facility where live racing occurs and does not include any offtrack wagering facility.

§ 7196. Construction of subchapter.

Wherever in this subchapter a section specifically refers to the activities of thoroughbred or harness horse racing and related activities, the activity of gaming and related activities referred to in this subchapter shall be included. It is the intention of the General Assembly to make all provisions of this subchapter applicable, where appropriate, and not inconsistent with this section, to the gaming activities and related activities referred to in this section.

Section 3. This act shall take effect as follows:

(1) The amendment of 18 Pa.C.S. § 3304(b) shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Bucks, Senator Tomlinson.

Senator TOMLINSON. Mr. President, what I have done in my amendment is offered an amendment that authorizes gaming devices or slot machines in the racetracks in Pennsylvania, and this is in a direct attempt to put Pennsylvania back in competition with Delaware, West Virginia, New Jersey, and New York. The district I come from, the 6th Senatorial District, has Philadelphia Park, which is a racetrack that has existed for 29 years, and in 29 years they have paid over \$30 million in property taxes. They have offered real property tax relief to the homeowners in my community. They also presently offer 1,800 jobs, and with this legislation they would offer another 1,000 jobs.

The racing industry in the State of Pennsylvania is over a billion dollar industry. It employs, through accelerated jobs, 35,000 people. It has a major, major financial impact through agriculture, horse breeding, the racetracks, and other spin-off businesses. What has happened in the last 10 months is that Delaware Park has introduced slot machines into their three racetracks. The revenues at Philadelphia Park and now also at the Meadowlands out near Pittsburgh have dropped between 12 and 15 percent in just the last few months. There is no question that this has had a major effect on the horseracing industry in Pennsylvania, and there is no question in my mind that if I do not get this legislation I will lose 1,800 jobs and \$1 million a year in property taxes to my local community. And I know a lot of people here talk about what legislation will do for you

and what it can possibly do when there are promises, but I just cited to you those examples that it has already done.

The horseracing industry in the State of Pennsylvania has been a good corporate citizen. They have paid millions and millions of dollars in taxes, invested hundreds of millions of dollars in infrastructure, and created thousands and thousands of jobs. What I have asked now, to put the slot machines in these racetracks, is a very narrow, a very limited form of gambling. It is an attempt to save an industry that has existed in this State for over 40 years. So I am asking for support of that.

What I have done with the additional revenue is I have put 70 percent of that money into basic education, which should create about \$229 million. I put 15 percent into the Department of Community Affairs for the appropriation for stadiums. I put 5 percent into agriculture and conservation in easement purchase funds, which will be \$16 million, which is almost the total amount of the money which is in that program right now. I put 5 percent in for the local counties, 2.5 percent for each school district and the local municipality, and that is how I divided up that money. In addition to that, we have given 14 percent of the revenues to the horsemen, and an additional 2 percent to the breeders, for a total of 16 percent. For example, in Delaware they have given 10 percent. I have also given \$500,000 per year for the jockeys' insurance program and the insurance fund for jockeys and disabled jockeys.

I guess the biggest difference between my amendment and the previous amendment is that I am attempting to save an industry that is already here and jobs that are already here. I am attempting to save a property tax program that is already working in my community. I am attempting to help out our public schools. I am attempting to help out open farmland. Bensalem, where this track exists, is a very congested area. There are over 63,000 people in this second class township, and right in the middle of those 63,000 people is a nice 400-some acres of land that is wide open, it is open space, and I would like to keep it like that. I do not want another mall, I do not want another development, I do not want more growth. I just want to keep my racetrack.

Mr. President, I ask for your consideration on this. I have included in this a statewide referendum so that the voters may also have a voice.

Thank you very much for your consideration.

LEGISLATIVE LEAVE

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, Senator Bell has been called from the floor, and I request a temporary Capitol leave on his behalf.

The PRESIDENT. Without objection, that leave is granted.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were required by Senator TOMLINSON and were as follows, viz:

YEAS—23

Andrezeski	Heckler	Mellow	Stewart
Bell	Holl	Musto	Tartaglione
Bodack	Hughes	Porterfield	Tomlinson
Costa	Kasunic	Rhoades	Wagner
Fisher	LaValle	Salvatore	Williams
Fumo	Loeper	Stapleton	

NAYS—27

Afflerbach	Greenleaf	Mowery	Shaffer
Armstrong	Hart	O'Pake	Stout
Belan	Helfrick	Peterson	Thompson
Brightbill	Jubelirer	Piccola	Tilghman
Corman	Kitchen	Punt	Uliana
Delp	Lemmond	Robbins	Wenger
Gerlach	Madigan	Schwartz	

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate agree to the bill on third consideration?

Senator GERLACH offered the following amendment No. A8173:

Amend Title, page 1, line 3, by removing the period after "mischief" and inserting: and for gambling devices and gambling.

Amend Sec. 1, page 1, line 6, by striking out "Section 3304(b)" and inserting: Sections 3304(b) and 5513

Amend Sec. 1, page 1, line 7, by striking out "is" and inserting: are

Amend Sec. 1, page 2, by inserting between lines 5 and 6: § 5513. Gambling devices, gambling, etc.

(a) Offense defined.—A person is guilty of a misdemeanor of the first degree if he:

(1) intentionally or knowingly makes, assembles, sets up, maintains, sells, lends, leases, gives away, or offers for sale, loan, lease or gift, any punch board, drawing card, slot machine or any device to be used for gambling purposes, except playing cards;

(2) allows persons to collect and assemble for the purpose of unlawful gambling at any place under his control;

(3) solicits or invites any person to visit any unlawful gambling place for the purpose of gambling; [or]

(4) being the owner, tenant, lessee or occupant of any premises, knowingly permits or suffers the same, or any part thereof, to be used for the purpose of unlawful gambling[.]; or

(5) establishes or operates a nonprimary location as defined in section 102 of the act of December 17, 1981 (PL435, No.135), known as the Race Horse Industry Reform Act, in any municipality unless there has been an affirmative vote in a referendum in that municipality pursuant to subsection (g). For purposes of this section, the term "municipality" shall be a city, borough, incorporated town or township or a home rule municipality formerly classified as a city, borough, incorporated town or township.

(b) Confiscation of gambling devices.—Any gambling device possessed or used in violation of the provisions of subsection (a) of this section shall be seized and forfeited to the Commonwealth. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of intoxicating liquor shall apply to seizures and forfeitures under the provisions of this section.

(c) Antique slot machines.—

(1) A slot machine shall be established as an antique slot machine if the defendant shows by a preponderance of the evidence that it was manufactured prior to 1941 and that it was not used or attempted to be used for any unlawful purposes. Notwithstanding subsection (b), no antique slot machine seized from any defendant shall be destroyed or otherwise altered until the defendant is given an

opportunity to establish that the slot machine is an antique slot machine. After a final court determination that the slot machine is an antique slot machine, the slot machine shall be returned pursuant to the provisions of law providing for the return of property; otherwise, the slot machine shall be destroyed.

(2) It is the purpose of this subsection to protect the collection and restoration of antique slot machines not presently utilized for gambling purposes.

(d) Shipbuilding business.—Notwithstanding any other provisions of this section, a person may construct, deliver, convert or repair a vessel that is equipped with gambling devices if all of the following conditions are satisfied:

(1) The work performed on the vessel is ordered by a customer who uses or possesses the vessel outside of this Commonwealth in a locality where the use or possession of the gambling devices on the vessel is lawful.

(2) The work performed on the vessel that is equipped with gambling devices is performed at a shipbuilding or repair yard located within a port facility under the jurisdiction of any port authority organized under the act of December 6, 1972 (P.L.1392, No.298), known as the Third Class City Port Authority Act.

(3) The person provides the Office of Attorney General, prior to the importation of the gambling devices into this Commonwealth, records that account for the gambling devices, including the identification number affixed to each gambling device by the manufacturer, and that identify the location where the gambling devices will be stored prior to the installation of the gambling devices on the vessel.

(4) The person stores the gambling devices at a secured location and permits any person authorized to enforce the gambling laws to inspect the location where the gambling devices are stored and records relating to the storage of the gambling devices.

(5) If the person removes used gambling devices from a vessel, the person shall provide the Office of Attorney General of Pennsylvania with an inventory of the used gambling devices prior to their removal from the vessel. The inventory shall include the identification number affixed to each gambling device by the manufacturer.

(6) The person submits documentation to the Office of Attorney General of Pennsylvania no later than 30 days after the date of delivery that the vessel equipped with gambling devices has been delivered to the customer who ordered the work performed on the vessel.

(7) The person does not sell a gambling device to any other person except to a customer who shall use or possess the gambling device outside of this Commonwealth in a locality where the use or possession of the gambling device is lawful. If a person sells a gambling device to such a customer, the person shall submit documentation to the Office of Attorney General of Pennsylvania no later than 30 days after the date of delivery that the gambling device has been delivered to the customer.

(d.1) Nonprimary racetrack location referendum.—No person, including any licensed corporation, may establish a nonprimary location as defined in section 102 of the Race Horse Industry Reform Act, in any municipality that has not approved the establishment of the nonprimary location by an affirmative vote in a referendum at a primary, municipal or general election, but not more often than once in four years, in accordance with the following procedures:

(1) Upon receipt of a nonprimary location statement, the appropriate commission shall forward a copy of the statement to the Secretary of the Commonwealth, who shall certify the form of the referendum question under paragraph (2) to the appropriate county board of elections.

(2) The appropriate county board of elections shall cause a question to be placed on the ballot or on the voting machine board and submitted to the electors of the municipality which is the proposed site of the nonprimary location at the next ensuing primary, municipal or general election which is at least 60 days after the secretary's certification of the question to the county board of elections. The question shall be in substantially the following form:

Do you favor the establishment of an off-track betting facility (nonprimary location) in the
of _____?

(3) If a majority of electors voting on the question vote "yes," then the appropriate commission may approve the establishment of a nonprimary location in the municipality, but if a majority of the electors voting on the question vote "no," then the appropriate commission shall not approve the establishment of a nonprimary location in the municipality.

(4) This paragraph shall apply to the establishment of any nonprimary location, which is the subject of a nonprimary location statement submitted on or after January 31, 1996, unless the person establishes that the nonprimary location has received Phase (I) and (II) approval from the State Horse Racing Commission and the State Harness Racing Commission on or before November 20, 1996.

(e) Penalty.—Any person who fails to provide records as provided in subsection (d) commits a summary offense.

(f) Definitions.—As used in this section, the term "gambling place" does not include a vessel that is in the process of construction, delivery, conversion or repair by a shipbuilding business that complies with subsection (d).

Section 2. The act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act, or any portions thereof shall be repealed to the extent that they are inconsistent with the amendatory provisions added to 18 Pa.C.S. § 5513.

Amend Sec. 2, page 2, line 6, by striking out "2" and inserting:
3

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Chester, Senator Gerlach.

Senator GERLACH. Mr. President, this amendment would amend section 5513 of Title 18 to permit local communities and local citizens to have greater say and control over the character of their communities by giving them the power to vote by local referendum on whether or not an offtrack betting facility will be established in their community. The current law permits the establishment of offtrack betting facilities upon approval by the Horse Racing or Harness Racing Commissions, and for some time many citizens have asked for the power to be able to determine whether or not an offtrack betting facility will go in their community based on local referendum.

We currently give the power to our local citizens to decide the issue of the sale of alcoholic beverages in their community. We give them the authority to make the decision on whether or not to permit small games of chance in that local community. This amendment will allow them that opportunity by voting on an offtrack betting facility.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were required by Senator GERLACH and were as follows, viz:

YEAS—16

Armstrong	Greenleaf	Jubelirer	Punt
Bell	Hart	Lemmond	Shaffer
Corman	Heckler	Madigan	Thompson
Gerlach	Helfrick	Mowery	Wenger

NAYS—34

Afflerbach	Holl	Peterson	Stewart
Andrezeski	Hughes	Piccola	Stout
Belan	Kasunic	Porterfield	Tartaglione
Bodack	Kitchen	Rhoades	Tilghman
Brightbill	LaValle	Robbins	Tomlinson
Costa	Loeper	Salvatore	Uliana
Delp	Mellow	Schwartz	Wagner
Fisher	Musto	Stapleton	Williams
Fumo	O'Pake		

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,

Will the Senate agree to the bill on third consideration?

BILL OVER IN ORDER

Senator LOEPER. Mr. President, I request that House Bill No. 2118 go over in its order.

The PRESIDENT. The bill will go over.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 6

BILL REREPORTED FROM COMMITTEE AS AMENDED REREFERRED

HB 640 (Pr. No. 4295) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for wheel chairs and electrical mobility devices and for handicapped plate and placard and for railroad crossings; providing for special registration plates for Vietnam veterans; and further providing for permits for movements of goods during manufacture and for the maximum height of vehicles and for permits for movement of wooden structures; prohibiting use of dyed diesel fuel; authorizing agents to perform inspections; authorizing the Commonwealth to enter into agreements with private firms for the development, financing, design, construction and operation of highways; and providing for the powers and duties of the Department of Transportation, for studying the feasibility of making existing State highways privately operated highways and for the contracting of maintenance and law enforcement services; and providing penalties.

Upon motion of Senator LOEPER, and agreed to, the bill was rereferred to the Committee on Appropriations.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. Senator Punt has returned, and his temporary Capitol leave is cancelled.

UNFINISHED BUSINESS CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered and adopted:

Congratulations of the Senate were extended to Mr. and Mrs. Edward P. Huegel by Senator Armstrong.

Congratulations of the Senate were extended to Mr. and Mrs. George Thomas, Mr. and Mrs. James M. McCarthy, Mr.

and Mrs. Wayne Cummings and to Mr. and Mrs. Edward J. Vincent by Senator Bodack.

Congratulations of the Senate were extended to Mr. and Mrs. John A. Looser, Mr. and Mrs. Walter E. Alwine, Mr. and Mrs. George W. Neiderer and to Eric Jonathan Polek by Senator Delp.

Congratulations of the Senate were extended to Seth Allen Hayik by Senator Gerlach.

Congratulations of the Senate were extended to Mr. and Mrs. John Simolike by Senator Greenwood.

Congratulations of the Senate were extended to Mr. and Mrs. Frank Petrovich, Mr. and Mrs. Zigmund Waruszewski, Mr. and Mrs. William J. Hart, Mr. and Mrs. William Ray Haught and to Westshoremen, Incorporated, of Harrisburg, by Senator Hart.

Congratulations of the Senate were extended to Peggy O'Neill by Senator Heckler.

Congratulations of the Senate were extended to Mr. and Mrs. Charles Share, Mr. and Mrs. Richard M. Snyder, Mr. and Mrs. Earl Wallace, Mr. and Mrs. Doyle E. Hess and to Mr. and Mrs. Lee D. Dubendorf by Senator Helfrick.

Congratulations of the Senate were extended to Brian T. Drumm, Richard H. Clark, Edward J. Piszczek, George W. Heuer, IV and to S. B. Global Foods, Inc., of Lansdale, by Senator Holl.

Congratulations of the Senate were extended to Mr. and Mrs. George H. Gearhart and to Mr. and Mrs. Jesse Fairbanks by Senator Jubelirer.

Congratulations of the Senate were extended to Mr. and Mrs. Louis F. Tomon by Senator LaValle.

Congratulations of the Senate were extended to Mr. and Mrs. Robert McKeage, Mr. and Mrs. Edgar Tilley, Mr. and Mrs. John Stokes, Mr. and Mrs. Verdon Fish, Mr. and Mrs. William Laubner, Mr. and Mrs. Stephen L. Lewis, Reverend and Mrs. Paul Reisch, Mr. and Mrs. Harry Thorn, Frank B. Jackson, Ina Perry Getter and to Valley Lodge No. 499 of West Pittston by Senator Lemmond.

Congratulations of the Senate were extended to Mr. and Mrs. Paul Mays, Mr. and Mrs. Richard D. Wilcox and to Mr. and Mrs. J.E. Moore by Senator Madigan.

Congratulations of the Senate were extended to Mr. and Mrs. Frank Mrowcza by Senator Mellow.

Congratulations of the Senate were extended to the Cumberland Valley High School Womens Water Polo Team by Senator Mowery.

Congratulations of the Senate were extended to Mr. and Mrs. Ray Atkins and to Mr. and Mrs. Fred Sampson by Senator Peterson.

Congratulations of the Senate were extended to Fredric A. Rosemeyer, Jr., by Senator Porterfield.

Congratulations of the Senate were extended to Mr. and Mrs. Walter Yackel and to Mr. and Mrs. Anthony Cerullo, Jr., by Senator Rhoades.

Congratulations of the Senate were extended to Joseph M. Scannapieco by Senator Salvatore.

Congratulations of the Senate were extended to Mr. and Mrs. Ernest Campbell, Mr. and Mrs. Kenneth Schall, Mr. and

Mrs. Daniel Gregory, Mr. and Mrs. Merle Wetzel, Mr. and Mrs. John Romanik, Mr. and Mrs. Harry O. Aites, Mr. and Mrs. Stephen Pelynio, Mr. and Mrs. Elmer Waugaman, Mr. and Mrs. John Canter, Mr. and Mrs. Pete Cubeta and to Mr. and Mrs. Alfred Speer by Senator Stapleton.

Congratulations of the Senate were extended to Mr. and Mrs. Walter Kraynek, Mr. and Mrs. Harry Milhoan and to Mr. and Mrs. John Bonazza by Senator Stout.

Congratulations of the Senate were extended to First Financial Savings Bank of Downingtown and to the Joint United Nations Programme on HIV/AIDS by Senator Thompson.

Congratulations of the Senate were extended to Mr. and Mrs. Albert Apgar by Senator Uliana.

Congratulations of the Senate were extended to Mr. and Mrs. Arthur J. Londino by Senator Wagner.

CONDOLENCE RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered and adopted:

Condolences of the Senate were extended to the family of the late Earl Grayson, Jr., by Senator Kitchen.

Condolences of the Senate were extended to the family of the late Oscar Lingle by Senator Piccola.

HOUSE MESSAGES

HOUSE CONCURS IN SENATE AMENDMENTS TO HOUSE BILLS

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to **HB 2257, HB 2295, HB 2572 and HB 2617.**

HOUSE CONCURS IN SENATE BILLS

The Clerk of the House of Representatives returned to the Senate **SB 484 and SB 686**, with the information the House has passed the same without amendments.

BILLS SIGNED

The PRESIDENT (Lieutenant Governor Mark S. Schweiker) in the presence of the Senate signed the following bills:

SB 484, SB 686, SB 1320, HB 774, HB 873, HB 1468, HB 1929, HB 2091, HB 2257, HB 2295, HB 2572 and HB 2617.

ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

TUESDAY, NOVEMBER 26, 1996

9:30 A.M.	APPROPRIATIONS (to consider House Bills No. 497, 640, 2243 and 2362)	Room 461 Main Capitol
10:00 A.M.	BANKING AND INSURANCE (for the purpose of reviewing banks selling insurance products; Senate Bill No.	Room 8E-A East Wing

1711; and any other business that may come before the Committee)

11:15 A.M.

RULES AND EXECUTIVE NOMINATIONS (to consider Senate Bills No. 2, 212, 471, 5009, 689, 809, 860, 863, 1038, 1052, 1110, 1197, 1204, 1219, 1234, 1292, 1444, 1448, 1469, 1509, 1513, 1585, 1590, 1646, 1667, and 1681; and House Bill No. 2685; and certain executive nominations.

Rules Cmte.
Conf. Rm.

ADJOURNMENT

Senator LOEPER. Mr. President, I move that the Senate do now adjourn until Tuesday, November 26, 1996, at 11:30 a.m., Eastern Standard Time.

The motion was agreed to.

The Senate adjourned at 11:59 p.m., Eastern Standard Time.